

No. 16390 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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WICKAHONEY SHEEP COMPANY, a corporation,

Appellant,

vs.

C. A. SEWELL, ORENE H. SEWELL and  
ORVILLE R. WILSON,

Appellees.

and

BANK OF IDAHO,

Appellant.

vs.

C. A. SEWELL, ORENE SEWELL and  
ORVILLE R. WILSON,

Appellees.

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Transcript of Record

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Appeals from the United States District Court  
for the District of Idaho,  
Southern Division.

FILED



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Appeals from the United States District Court  
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Attorneys for Appellees.





In the United States District Court for the  
District of Idaho, Southern Division

No. 3339

C. A. SEWELL, ORENE H. SEWELL and  
ORVILLE R. WILSON,

Plaintiffs,

vs.

WICKAHONEY SHEEP COMPANY, an Idaho  
Corporation, and BANK OF IDAHO (For-  
merly Continental State Bank), an Idaho Cor-  
poration,

Defendants.

## COMPLAINT

### First Count

Plaintiff for a First Count herein allege:

#### I.

That the plaintiffs, C. A. Sewell and Orene H. Sewell, are now, and at all times hereinafter mentioned have been, husband and wife. Each and all of the plaintiffs are citizens of the State of Nevada. Defendant, Wickahoney Sheep Company is a corporation, incorporated under the laws of the State of Idaho. Defendant Bank of Idaho (formerly Continental State Bank is a corporation, incorporated under the laws of the State of Idaho. The matter in controversy exceeds, exclusive of interests and costs, the sum of \$3,000.00.

## II.

That on or about the 15th day of December, 1955, plaintiffs, C. A. Sewell and Orene H. Sewell, as sellers, entered into a written Purchase Agreement dated December 15, 1955, with defendant, Wickahoney Sheep Company, as purchaser, whereby said sellers promised and agreed to sell to purchaser and purchaser promised and agreed to purchase from sellers all that certain personal property listed and described in Exhibit B attached to said Purchase Agreement for the total purchase price of \$121,700.00, on the terms and conditions set forth in said Purchase Agreement. That a copy of said Purchase Agreement is attached hereto, marked Exhibit A, and by reference made a part hereof as though set forth at length herein.

## III.

That said plaintiff, C. A. Sewell and Orene H. Sewell, have duly and regularly assigned said Purchase Agreement to plaintiff, Orville R. Wilson.

## IV.

That defendant, Wickahoney Sheep Company, has failed and refused and still fails and refuses to perform said Purchase Agreement and is in default in the performance thereof in the following respects:

(a) Defendant, Wickahoney Sheep Company, has failed and refused and still fails and refuses to make said payment of \$15,000.00 due and payable on October 10, 1956, or any part thereof.

(b) Defendant, Wickahoney Sheep Company, has depleted the 4,005 ewes and 82 bucks, which were part of the personal property sold under said Purchase agreement, to the total number of ewes and bucks of 3,718.

(c) Defendant, Wickahoney Sheep Company, did without the knowledge or consent of plaintiffs make, execute and deliver the following chattel mortgages upon all of the sheep and the increase and lambs thereof which were sold under said purchase agreement, to defendant, Bank of Idaho (formerly Continental State Bank), which said chattel mortgages and the sums of money secured thereby are as follows:

Date of Mortgage	Amount
9/17/56 .....	\$ 50,000
11/ 1/56 .....	50,000
11/27/56 .....	65,000
1/ 5/57 .....	100,000

#### IV.

That on January 17, 1957, plaintiffs gave defendant, Wickahoney Sheep Company, notice in writing of the above-mentioned defaults as provided in said Purchase Agreement. That more than ninety days have elapsed since said written notice of default was given to defendant, Wickahoney Sheep Company, but said defendant, Wickahoney Sheep Company, has failed and refused and still fails and refuses to remedy said defaults, or any of them. After the expiration of said ninety-day period

plaintiffs claimed a forfeiture of said Purchase Agreement.

## V.

That after plaintiffs forfeited said Purchase Agreement, they made demand upon defendant, Wickahoney Sheep Company, for the delivery of the possession of all of said personal property listed and described in said Purchase Agreement and said Exhibit B attached thereto, and all increase and lambs born of said sheep being sold under said Purchase Agreement, and all wool clipped from said sheep, but the defendant, Wickahoney Sheep Company, has failed, refused and neglected and still fails, neglects and refuses to deliver said possession of said personal property, or any part thereof to plaintiffs, and said defendant, Wickahoney Sheep Company, without plaintiffs' consent, wrongfully and unlawfully detains all of said personal property from the possession of plaintiff.

## VI.

That none of said personal property, nor any part thereof, has been taken for a tax assessment or a fine, pursuant to statute, or seized under an execution or an attachment against the property of plaintiffs, or any of them, and plaintiffs are entitled to the immediate possession of all of said personal property listed and described in said Purchase Agreement and said Exhibit B attached thereto, and all lambs and increase of the sheep being sold under said Purchase Agreement and of all wool clipped and obtained from said sheep. That

the aggregate value of said personal property is the sum of \$225,100.00.

## VII.

That before the commencement of this action the plaintiffs duly performed all the conditions precedent of said Purchase Agreement on their part to be performed.

### Second Count

Plaintiffs for a Second Count herein allege:

#### I.

The plaintiffs reallege paragraphs I, II, III, IV, V, VI, and VII of the First Count of this Complaint, and by reference make them a part of this Count.

#### II.

That under the terms and provisions of said Purchase Agreement, an executed copy thereof and bills of sale to said personal property were deposited in escrow with the Bank of Idaho (formerly Continental State Bank) at Boise, Idaho, as escrow holder. That after plaintiffs declared a forfeiture of said Purchase Agreement, as aforesaid, plaintiffs made demand on said defendant, Bank of Idaho, to turn over and deliver to plaintiffs said executed copy of said Purchase Agreement and said bills of sale; that defendant, Bank of Idaho, has failed, neglected and refused and still fails, neglects and refuses to turn over and deliver to plaintiffs said executed copy of said Purchase Agreement or said bills of sale.



## Third Count

Plaintiffs for a Third Count herein allege:

## I.

The plaintiffs reallege paragraphs I, II, III, IV, V, VI, and VII of the first Count of this Complaint, and by reference make them a part of this Count.

## II.

That defendant, Bank of Idaho (formerly Continental State Bank), had actual knowledge and notice of said Purchase Agreement, being Exhibit A, attached hereto, and of plaintiffs' ownership of and title to the personal property being sold under said Purchase Agreement. That without the knowledge or consent of plaintiffs, defendant, Bank of Idaho, received and accepted from defendant, Wickahoney Sheep Company, chattel mortgages upon the sheep and the increase thereof owned by plaintiffs as aforesaid, which chattel mortgages and the sums of money secured thereby are as follows:

Date of Mortgage	Amount
9/17/56 .....	\$ 50,000
11/ 1/56 .....	50,000
11/27/56 .....	65,000
1/ 5/57 .....	100,000

That each and every of said chattel mortgages was filed for record in the office of the County Recorder of Owyhee County, State of Idaho.

III.

That each and every of said chattel mortgages above described are a cloud upon plaintiffs' title to said sheep and the increase thereof and that each and every of said chattel mortgages is inferior and subordinate to plaintiffs' ownership of and title to said sheep and the increase thereof.

Wherefore, plaintiffs demand judgment against the defendants as follows:

1. On the First Count, that plaintiffs have judgment against defendant, Wickahoney Sheep Company, for the recovery of the possession of all of said personal property listed and described in said Purchase Agreement, being Exhibit A attached hereto, and in Exhibit B attached to said Purchase Agreement, together with all increase and lambs born of said sheep listed and described therein and together with all wool clipped or obtained from said sheep, or for the sum of \$225,100.00, the value thereof, in case delivery of said personal property cannot be made to plaintiffs.

2. On the Second Count, that defendant, Bank of Idaho (formerly Continental State Bank), be ordered and directed to turn over and deliver to plaintiffs the executed copy of said Purchase Agreement and all bills of sale held by it as escrow holder thereunder.

3. On the Third Count, that said chattel mortgages and all of them be declared inferior and secondary to plaintiffs' ownership of and title to said

sheep and the increase thereof, and the cloud upon plaintiffs' title thereto be removed and that said chattel mortgages be cancelled and discharged of record.

4. That plaintiffs have and recover their costs and disbursements herein incurred and expended, and for such other and further relief as to this Court may seem meet and equitable.

/s/ W. H. LANGROISE,

/s/ W. E. SULLIVAN,

Attorneys for Plaintiff.

## EXHIBIT A

### Purchase Agreement

This Agreement, made and entered into this 15th day of December, 1955, by and between C. A. Sewell and Orene H. Sewell, husband and wife, of Elko, Nevada, hereinafter called "Sellers," and Wickahoney Sheep Company, an Idaho corporation, with its principal place of business at Boise, Idaho, hereinafter called "Purchaser";

### Witnesseth:

1. That the Sellers hereby agree to sell, free and clear of any and all encumbrances, and the Purchasers agree to purchase all of that certain personal property located on and used in connection



with those two ranches known as the "Wickahoney Ranch" and the "Smith Ranch," all in Owyhee County, State of Idaho, which personal property is more particularly described in Exhibit "B," which Exhibit is attached hereto and made a part hereof as if set forth in full herein, for the total purchase price of One Hundred Twenty-one Thousand Seven Hundred and no/100 (\$121,700.00) Dollars, payable by the Purchaser to the Sellers in lawful money of the United States of America, as follows:

The sum of \$15,000.00 which has heretofore been paid by the Purchasers to the Sellers, receipt of which is hereby acknowledged by the Sellers;

The remainder of the purchase price, to wit: The sum of \$106,700.00, to bear interest at the rate of 5% per annum on the unpaid balance from October 10, 1955, payable as follows:

\$15,000.00 to be paid on October 10, 1956, which payment is to be credited first to interest then due and the balance applied to principal;

\$15,000.00 to be paid on October 10, 1957, which payment is to be credited first to interest then due and the balance applied to principal;

\$15,000.00 to be paid on October 10, 1958, which payment is to be credited first to interest then due and the balance applied to principal;

\$15,000.00 to be paid on October 10, 1959, which payment is to be credited first to interest then due and the balance applied to principal;

\$15,000.00 to be paid on October 10, 1960, which payment is to be credited first to interest then due and the balance applied to principal;

\$15,000.00 to be paid on October 10, 1961, which payment is to be credited first to interest then due and the balance applied to principal;

\$15,000.00 to be paid on October 10, 1962, which payment is to be credited first to interest then due and the balance applied to principal;

\$15,000.00 to be paid on October 10, 1963, which payment is to be credited first to interest then due and the balance applied to principal;

And a final payment to be made on October 10, 1964, in the total amount of interest then due plus the remaining balance of the principal.

2. The Purchaser agrees during the life of this agreement to maintain, to maintain, keep in good condition and repair, and otherwise protect the personal property covered by this agreement, and in the event of loss or damage by fire, Purchaser shall repair or replace the property so damaged or destroyed, so that the value of the property covered by this agreement shall remain essentially the same.

3. Simultaneously with the execution of this agreement, Sellers agree to execute a proper bill of

sale or bills of sale selling to the Purchaser all of the above-described personal property, free and clear of liens and encumbrances, and that an executed copy of this agreement, together with the executed bill of sale or bills of sale shall be deposited in escrow with the Continental State Bank at Boise, Idaho, with instructions to said escrow holder to accept the payments when made by the Purchaser as provided herein, for the account of the Sellers, and that when the total sum of \$106,700.00, together with interest at 5% per annum on the unpaid balance, has been paid by the Purchaser in the installments as provided in this agreement, the escrow holder shall deliver to the Purchaser the bill of sale or bills of sale and any and all papers or instruments held by it in escrow subject to the terms of this agreement.

4. The Sellers agree to pay all taxes and assessments for the year 1954, and prior thereto, which have been levied or assessed by reason of the personal property herein sold. The Purchaser agrees to pay all such taxes and assessments due for the year 1956 and thereafter. Such personal property taxes and assessments due for the year 1955 shall be prorated between the parties as of October 18, 1955, the Sellers paying the portion due for January 1 through October 18, 1955, and the Purchasers, the balance.

5. Time is of the essence of this agreement, and should Purchaser be in default in any of the terms or conditions of this agreement, Sellers shall give

Purchaser notice of such claimed default in writing, addressed to Purchaser at 212 Continental Bank Building, Boise, Idaho, to be sent by registered or certified mail, postage prepaid, return receipt requested, and thereafter Purchaser shall have ninety (90) days within which to remedy the claimed default. Should the Purchaser fully perform those matters claimed to be in default as set out in said notice within said ninety-day period, no forfeiture may be declared or shall become effective. However, in the event that Purchaser fails to remedy the claimed default within the ninety-day period, Seller may claim a forfeiture of this agreement and shall have the right to retake possession of the personal property herein described, or its replacements, and the Sellers may retain all payments made hereunder as liquidated damages. It is further agreed that any delay or departure from the terms of this agreement, or any delay in enforcing the performance thereof, by or with the consent of the Sellers, shall not operate to waive or be a waiver of the right of the Sellers to stand upon the strict letter and construction of the terms hereof and shall not be construed to be a waiver of the right of the Sellers to enforce performance under this agreement in accordance with its terms.

6. The Sellers agree to give possession of the above-described personal property to the Purchaser on or before October 18, 1955.

7. This agreement shall be binding upon and inure to the benefit of the heirs, executors, ad-

ministrators, successors and assigns of the parties hereto.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

C. A. SEWELL,  
ORENE H. SEWELL,  
Sellers.

WICKAHONEY SHEEP  
COMPANY,  
An Idaho Corporation,  
Purchaser;

[Seal] By CIRIACO LEZAMIZ,  
President.

Attest:

JOHN M. DAHL,  
Secretary.

Duly verified.

[Endorsed]: Filed May 8, 1957.

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[Title of District Court and Cause.]

MOTION TO DISMISS AND MOTION FOR  
MORE DEFINITE STATEMENT

Come Now the defendants herein, and move the Court to dismiss the complaint for the reason that the same does not state a claim against the defend-



ants, or either of them, upon which relief may be granted.

Further, the defendants move that the plaintiffs be required and ordered to furnish a more definite statement of the nature of their claim, as set forth in the complaint, in the following particulars:

First Count:

1. Referring to Paragraph III, plaintiffs allege an assignment of said purchase agreement to Orville R. Wilson, and it is impossible to ascertain from said paragraph, nor any allegation therein, when said purported assignment was made, nor the terms and nature thereof.

2. Referring to Paragraph IV, it is impossible to ascertain from any allegation therein the contents, nature and effect of the purported notice of default as alleged therein, and how or in what manner said notice was communicated to defendant Wickahoney Sheep Company. Further, it is impossible to ascertain from said paragraph, or any allegation therein, how or in what manner the plaintiffs claimed a forfeiture of said purchase agreement.

3. Referring to Paragraph V, it is impossible to ascertain from any allegation therein the nature and form of the purported demand made upon the defendant Wickahoney Sheep Company for delivery of the personal property, and whether or not the same was oral or in writing, or how the

same was communicated to the said defendant Wickahoney Sheep Company.

Second Count:

1. Defendants reallege their paragraphs 1, 2 and 3 above set out in this motion as applicable to Paragraph I of plaintiffs' second count.

2. Referring to Paragraph II, it is impossible to ascertain from any allegation therein the terms and conditions upon which said purchase agreement and bill of sale were deposited in escrow with the Bank of Idaho as escrow holder, and how or in what manner plaintiffs made demand upon said defendant Bank of Idaho. Further, it is impossible to ascertain whether or not, in making such purported demand and in declaring the forfeiture, the plaintiffs complied with the terms of said escrow agreement, if any.

Third Count:

1. Defendants reallege their paragraphs 1, 2 and 3 above set out in this motion under First Count as applicable to Paragraph I of plaintiffs' third count.

2. Referring to Paragraph II, it is impossible to ascertain from any allegation therein how or in what manner the plaintiffs will claim actual knowledge and notice of said purchase agreement on the part of defendant Bank of Idaho.

For the reasons referred to above, the complaint

of the plaintiffs is so vague and ambiguous that the defendants find it impossible to prepare a responsive pleading thereto, and in that connection defendants allege they should not be required to prepare such responsive pleading without a more definite statement from the plaintiffs in connection with said allegations.

Dated this 5th day of June, 1957.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendants.

Service of copy acknowledged.

[Endorsed]: Filed June 5, 1957.

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[Title of District Court and Cause.]

MINUTE ORDER—JUNE 11, 1957

Judge Chase A. Clark.

This matter came on for hearing on defendants' Motion to Dismiss and Motion for More Definite Statement, Willis Sullivan, Esquire, appearing as counsel for plaintiffs and Jess Hawley, Esquire, appearing for defendants.

After hearing counsel, the Court denied the motions and granted defendants 30 days to answer.



[Title of District Court and Cause.]

## ANSWER AND COUNTER-CLAIM

Come Now the defendants and each of them, and in answer to the complaint of the plaintiffs on file herein admit, deny and allege as follows:

### First Count

#### I.

Answering Paragraph I, defendants deny that the matter in controversy exceed, exclusive of interest and costs, the sum of \$3,000.00. Defendants admit each and every other allegation therein.

#### II.

Answering Paragraph II, defendants admit each and every allegation therein.

#### III.

Answering Paragraph III, defendants allege that they do not have information sufficient to form a belief as to the truth of the allegations therein, and for that reason deny each and every allegation therein contained.

#### IV.

Answering Paragraph IV of said complaint, defendants deny each and every allegation therein.

#### V.

Answering the second paragraph numbered IV, defendants deny each and every allegation therein contained.

## VI.

Answering Paragraph V, defendants deny each and every allegation therein.

## VII.

Answering Paragraph VI, defendants admit that none of said personal property, nor any part thereof, has been taken for taxes, fine pursuant to statute, or seized under execution or attachment against the plaintiffs. Defendants deny each and every other allegation therein.

## VIII.

Answering Paragraph VII of said complaint, defendants deny each and every allegation therein.

## Second Count

## I.

In answer to Paragraphs I through VII, defendants reallege their answering Paragraphs I through VIII of the First Count, and by reference make them a part of this answer to the Second Count.

## II.

Answering Paragraph II, defendants admit that an executed copy of the purchase agreement and bills of sale were deposited with defendant Bank of Idaho as escrow holder. Defendants deny each and every other allegation therein.

### Third Count

#### I.

In answer to Paragraphs I through VII, defendants reallege their answering Paragraphs I through VIII of the First Count, and by reference make them a part of this answer to the Third Count.

#### II.

Answering Paragraph II, defendants deny each and every allegation therein.

#### III.

Answering Paragraph III, defendants deny each and every allegation therein.

First Defense to First, Second and Third Counts:

Defendants allege that said complaint does not, nor any count therein contained, state a claim against these defendants upon which relief can be granted.

Second Defense to First, Second and Third Counts:

Defendants allege that, coincidentally with the execution of the purchase agreement, Exhibit A to the complaint, defendants and plaintiffs C. A. Sewell and Orene H. Sewell made and entered into an escrow agreement under date December 15, 1955, under which said purchase agreement referred to

and certain bills of sale were deposited with Continental State Bank (now Bank of Idaho); that a true and correct copy of said escrow agreement is appended hereto as Exhibit A to this answer and by reference incorporated as a part hereof as though set out in haec verba;

That under and pursuant to the terms of said escrow agreement, in the event plaintiffs C. A. Sewell and Orene H. Sewell elected to declare a default of the purchase agreement they were required to deliver to the escrow holder notification of default in duplicate, with instructions to the said escrow holder to mail the original notification of default by registered mail to defendant Wickahoney Sheep Company. Further, pursuant to said escrow agreement as aforesaid, it was provided therein that "all notices given pursuant to the terms of any agreement placed in escrow herewith must be given through the escrow holder as hereinafter provided, and said escrow holder shall not be required to recognize service of notice given in any other manner"; that the said plaintiffs, in connection with the pretended and alleged forfeiture as set forth in the complaint, did not in any respects comply with the provisions of the escrow agreement, Exhibit A to this answer, with respect thereto. Defendants further allege that said pretended forfeiture as set forth in the complaint is a nullity and of no force nor binding effect upon the defendants, nor either of them.

Third Defense to First, Second and Third Counts  
and Counter-claim:

Defendants allege as follows:

I.

That on or about the 15th day of December, 1955, plaintiffs C. A. Sewell and Orene H. Sewell, as sellers, and defendant Wickahoney Sheep Company, as buyer, made and entered into a written purchase agreement, Exhibit A to the complaint, which agreement is referred to and by reference incorporated as a part hereof as though set forth in haec verba, whereby sellers therein agreed to sell and buyers agreed to buy certain personal property as described in said Exhibit A to the complaint. In addition thereto, and at the same time, plaintiffs C. A. Sewell and Orene H. Sewell leased to defendant Wickahoney Sheep Company certain grazing lands in Owyhee County, State of Idaho, together with any and all grazing rights appurtenant thereto, for the purpose of keeping and grazing the said 4,005 ewes and 82 bucks referred to in the said purchase agreement; that said leases were for the terms of ten years, to coincide with the term of the purchase agreement as aforesaid.

II.

That the said purchase agreement, Exhibit A to the complaint, was obtained by the plaintiffs C. A. Sewell and Orene H. Sewell by fraud and misrepresentation made to defendant Wickahoney



Sheep Company, its agents, servants and employees; that none of the sheep referred to in the purchase agreement as aforesaid were over the age of five years; that the grazing lands and grazing rights appurtenant thereto, leased to defendant Wickahoney Sheep Company as aforesaid, were fully and completely adequate to keep, graze and hold all of the sheep referred to in said purchase agreement, without the necessity for defendant Wickahoney Sheep Company acquiring any additional grazing lands or grazing rights; that the sheep referred to in said purchase agreement were owned by plaintiffs C. A. Sewell and Orene H. Sewell free and clear of any encumbrance of any type or kind whatever; that all of said representations as aforesaid, made by the plaintiffs to defendant Wickahoney Sheep Company were in fact false and fraudulent, all of which plaintiffs well knew, and which representations were made by said plaintiffs to defendant Wickahoney Sheep Company for the purposes of deceiving it; that in truth and in fact in excess of six hundred of the said ewes were over five years of age, ranging from six to eight years in age; that the grazing lands and grazing rights were insufficient and inadequate to graze and hold the sheep which were the subject matter of the purchase agreement as aforesaid, and defendant Wickahoney Sheep Company was forced and required to and did lease additional grazing lands in order to properly sustain and graze said herd; that the sheep involved in said purchase agreement as aforesaid were encumbered by chattel

mortgage made and executed by plaintiffs C. A. Sewell and Orene H. Sewell as mortgagors to Producers Livestock Loan Company as mortgagee, prior to December 15, 1955, in the amount of \$50,000.00, the same being unsatisfied as of the date of execution of said purchase agreement, and constituting a lien and encumbrance against said sheep.

### III.

That the defendant Wickahoney Sheep Company relied fully upon the representations made by plaintiffs C. A. Sewell and Orene H. Sewell, and believed the same to be true, and relying upon the truth of the representations as aforesaid, which were in fact false and fraudulent and well known to the plaintiffs to be so, the defendant Wickahoney Sheep Company was misled and induced to execute said purchase agreement, Exhibit A to the complaint, which defendant Wickahoney Sheep Company would not have done upon the terms and conditions set forth therein other than for the false and fraudulent representations made by the said plaintiffs.

### IV.

That as a direct and proximate result of the false and malicious representations of the plaintiffs as aforesaid, inducing the defendant Wickahoney Sheep Company to enter into said purchase agreement, Exhibit A to the complaint, the defendant Wickahoney Sheep Company has been damaged in the amount of \$12,500.00 because of the



misrepresentation as to the ages of said sheep, and in the amount of \$10,000.00 as a result of the additional grazing lands and grazing rights that it has and must acquire in order to hold and graze said sheep as aforesaid.

Wherefore, Defendants Pray for judgment against the plaintiffs as follows:

1. That said complaint, together with all the counts therein, be dismissed, and that defendants have their costs necessarily incurred herein;

2. That the purported forfeiture of said purchase agreement as set forth in the complaint be declared ineffective and held for naught, and that said purchase agreement be declared to be in full force and effect and binding between the parties thereto;

3. That defendant Wickahoney Sheep Company have judgment against the plaintiffs on its counterclaim in the amount of \$22,500.00;

4. That the defendants have and recover their costs and disbursements in this action necessarily expended and incurred, and for such other and further relief as to this Court may seem just and equitable.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendants.

Service of the within and foregoing Answer acknowledged by receipt of a copy thereof this 17th day of July, 1957.

W. H. LANGROISE,  
W. E. SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Plaintiffs.

## EXHIBIT A

### Escrow Agreement

This escrow agreement entered into this 15th day of December, 1955, between C. A. Sewell and Orene H. Sewell as Grantors, and Wickahoney Sheep Company and . . . . ., as Grantees, and Continental State Bank, hereinafter referred to as the Bank, as escrow holder:

For and in consideration of the following compensation and promises the Bank agrees to act as Escrow Holder.

An initial filing fee of \$. . . ., and a collection fee of . . . . cents per hundred or fraction thereof of funds collected, with a minimum fee of . . . . . for each payment, together with its actual and necessary expenses, including attorney's fees.

Said collection fees to be paid by Wickahoney Sheep Company.

It is hereby agreed that said Bank shall not be liable for any loss or injury suffered or incurred by the Grantors or Grantees under any terms of the escrow or this agreement unless through negligence or wilful misconduct on the part of the Bank.

The parties hereto hereby further agree that the liability of the Bank shall be only for the safekeeping of any and all papers, documents and other instruments deposited herewith, and for the proper accounting and disbursement of all sums of money which may be deposited with it as the Escrow Holder and that the Bank is not liable for nor does it guarantee, warrant, or undertake to pass on the legality or sufficiency of any of the instruments placed with this escrow.

The parties hereto further agree that if any dispute shall arise among them regarding any part, term, or phrase of the contract deposited with this escrow, including any disagreement regarding whether any party or parties shall be in default with respect to any provision of the agreement or if any of the terms or provisions of the contract shall be uncertain, vague, or obscure then the parties to the contract, on demand of the Bank, shall deposit with the Bank a signed statement defining the meaning of such uncertain term or provision, or whether a default exists, and what shall be done about it. If the parties hereto refuse or fail to provide such a statement within thirty days after demand is made on them by the Bank, then the Bank shall be released from its obligation

to act as Escrow Holder. Upon being so released the Bank shall on written demand surrender said escrow to a new escrow holder or joint nominee of all of the parties to the escrow contract, but it shall not be liable to any or all of the parties for damages or costs for its refusal to surrender said escrow to anyone else. If the Bank is released from its duties as Escrow Holder as hereinbefore provided it shall be entitled to keep or retain any fee or compensation paid to it as such escrow holder.

Time is, and shall be, the essence and part of the consideration of the contract and in the event the Seller shall declare a default, he shall deliver to the bank as Escrow Holder, Notification of Default, in duplicate, with written instructions to the Escrow Holder to mail the original to the Purchaser by United States Registered Mail. In case the delinquent payment or payments or other causes of default shall not be made or corrected as specified in the Notification of Default within a period of thirty days from the date of mailing of the Notice of Default to the Purchaser then all documents shall be returned to the Grantors. It shall be the duty of both Seller and Purchaser to keep the Escrow Holder advised in writing at all times of their respective mailing addresses, and upon failure to do so the mailing of any notice to the address shown herein shall be conclusive evidence that notice has properly been given. All notices given pursuant to the terms of any agreement placed in escrow herewith must be given through the Escrow

Holder as hereinbefore provided, and said Escrow Holder shall not be required to recognize service of notice given in any other manner. The duplicate notice shall be retained with the escrow file. The expense of this notification, the Seller agrees to pay. The name and post office address of each of the parties to the contract are:

Name: C. A. Sewell and Orene H. Sewell.

Post Office Address: Henderson Bank Bldg.,  
Elko, Nevada.

Name: Wickahoney Sheep Company.

Post Office Address: 212 Continental Bank  
Bldg., Boise, Ida.

Said escrow consists of the following documents which are deposited herewith:

Warranty Deed: ..... Quitclaim Deed: .....  
Other Deed: ..... Rev. Stamps \$. .... Contract:  
XX. Mortgage: ..... Abstract: ..... Insurance:  
..... Stock: ..... Other Papers: Bill of Sale.

The parties hereto agree that if any payment called for in the agreement is not made to the bank as escrow holder within one year after the date due as specified and if during such period of time no Notification of Default is received from the Sellers then the Bank, at its option, may consider the escrow as terminated and return all documents to the Sellers by registered mail, addressed to the last known address of the Sellers. This provision is for the sole purpose to authorize the release of the Bank as escrow holder under such circum-



stances if it so desires, and it is not a part of any contract pertaining to any sale.

It is further agreed that if any part of the escrow agreement and this agreement are in conflict, then the provisions of this agreement shall govern.

Until further written notice to the escrow holder, signed by each of the parties of the first part, payments as received on this escrow agreement shall be disposed of as follows:

Credit Checking Account .....

Credit Savings Account .....

Remit X

Other .....

Lastly, the heirs, executors, administrators, successors, and assigns of the undersigned shall be governed and bound by the provisions hereof.

In Witness Whereof, the undersigned have hereto set their hands the day and year first above written.

C. A. SEWELL,  
ORENE H. SEWELL,  
WICKAHONEY SHEEP  
COMPANY,

An Idaho Corp.;

President.

By CIRIACO LEZAMIZ,

In Consideration of the compensation mentioned in the foregoing agreement to be paid to the undersigned as holder of the escrow described therein

and of the promises and agreements to the said bank therein contained, the undersigned hereby agrees to act as such escrow holder, and acknowledges receipt of above-listed papers.

CONTINENTAL STATE  
BANK,

By /s/ S. C. PRITCHARD.

[Endorsed]: Filed July 19, 1957.

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[Title of District Court and Cause.]

REPLY TO COUNTER-CLAIM

Come now the plaintiffs and each of them, and in reply to the defendants' Counter-claim on file herein admit, deny and allege as follows:

I.

In reply to paragraph I of said Counter-claim, the plaintiffs admit the allegations therein contained, except that the plaintiffs deny that said Lease was for the purpose of keeping and grazing the said 4,005 ewes and 82 bucks referred to in said Purchase Agreement, and further that the term of said lease was to coincide with the term of the said Purchase Agreement.

II.

In reply to paragraph II of said Counter-claim the plaintiffs deny the same and the whole thereof, and each and every allegation therein contained, except that plaintiffs admit that the sheep involved



in said Purchase Agreement were encumbered by a chattel mortgage made and executed by plaintiffs, C. A. Sewell and Orene H. Sewell, as mortgagors to Producers Livestock Loan Company as mortgagee, prior to December 15, 1955, in the amount of \$50,000, the same being unsatisfied as of the date of execution of said Purchase Agreement; and in that connection plaintiffs allege that during the month of June, 1956, said mortgage was fully paid, satisfied and discharged and that the same was not at any time thereafter and is not now a lien or encumbrance against said sheep.

### III.

In reply to paragraph III of said Counter-claim the plaintiffs deny the same and the whole thereof, and each and every allegation therein contained.

### IV.

In reply of paragraph IV of said Counter-claim the plaintiffs deny the same and the whole thereof, and each and every allegation therein contained.

Wherefore, plaintiffs demand judgment that the Counter-claim of defendants herein be dismissed and that plaintiffs have and recover their costs and disbursements herein incurred and expended.

/s/ W. H. LANGROISE,

/s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

Receipt of copy acknowledged.

[Endorsed]: Filed August 13, 1957.

[Title of District Court and Cause.]

### MOTION TO DEPOSIT IN COURT

Comes Now one of the defendants named herein, Bank of Idaho (formerly Continental State Bank), an Idaho corporation, by and through its attorneys of record, and, pursuant to the provisions of Rule 67 of the Federal Rules of Civil Procedure, respectfully moves that this defendant be authorized by the court to deposit therewith the following:

All bills of sale and the executed copy of the purchase agreement, and any other documents escrowed with defendant Bank of Idaho by plaintiffs C. A. Sewell and Orene H. Sewell and defendant Wickahoney Sheep Company, pursuant to the terms of the purchase agreement entered into between said parties, and pleaded herein as Exhibit A to the complaint, said defendant Bank of Idaho waiving and disclaiming any right or title thereto or interest therein;

That defendant Bank of Idaho be further authorized to deposit with this court the original chattel mortgaged pleaded by the plaintiffs in Paragraph IV(c) of the complaint, showing the same to be satisfied of record in the office of the County Recorder, Owyhee County, State of Idaho, as of August 27, 1957, together with true and correct copies of the satisfactions thereof.

This Motion is made upon the records and files of this proceedings, together with the affidavit of Jess

B. Hawley, Jr., attached hereto and by reference made a part hereof.

Dated this 10th day of September, 1957.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendant  
Bank of Idaho.

State of Idaho,  
County of Ada—ss.

Jess B. Hawley, Jr., being first duly sworn, deposes and says:

That he is over the age of twenty-one years, and a licensed attorney duly authorized to practice law in the State of Idaho; that he is one of the attorneys representing the defendant Bank of Idaho herein;

That on or about the 26th day of August, 1957, the defendant Bank of Idaho delivered to affiant executed satisfactions of all of the chattel mortgages as pleaded in Paragraph IV(c) of the complaint on file herein, said mortgages bearing instrument numbers 94875, 94975, 95070 and 95318, respectively, in the office of the County Recorder, Owyhee County, State of Idaho; that upon said date affiant mailed said satisfactions of mortgages as aforesaid to the County Recorder, Owyhee County, Idaho, and thereafter received from said County Recorder the original chattel mortgages re-

ferred to, bearing the stamp, signature and seal of said County Recorder showing the same to be satisfied and fully discharged of record; that photostatic copies of said satisfactions are attached hereto and made a part of this affidavit;

That said chattel mortgages, being satisfied and discharged as of August 27, 1957, the same do not constitute an encumbrance upon the chattels mortgaged thereunder, and do not constitute a cloud upon plaintiffs' title thereto.

Further affiant saith not.

/s/ JESS B. HAWLEY, JR.

Subscribed and sworn to before me this 10th day of September, 1957.

[Seal] /s/ M. F. LANE,

Notary Public for Idaho.

Know All Men by These Presents, That Ray F. Archibald, Asst. V. P., The Continental State Bank, Boise, Idaho, does hereby certify and declare that a certain mortgage bearing date the 1st day of November, A.D. 1956, made and executed by Wickahoney Sheep Company the party of the first part therein, to Continental State Bank, Boise, Idaho, the party of the second part therein, filed for record as No. 94975 of chattel mortgages and indexed in Book.... of Minutes of Mortgages of Personal Property, on page.... of the Public Records in the office of the County Recorder of the County of

Owyhee, State of Idaho, on the 7th day of November, 1956, together with the debt thereby secured, is fully paid, released, satisfied, and discharged.

In Witness Whereof, The said corporation herein first above mentioned has caused its corporate name to be hereunto subscribed and its corporate seal affixed by its Cashier, thereunto duly authorized, this 22nd day of August, A.D. 1957.

[Seal]                      CONTINENTAL STATE BANK,  
Boise, Idaho,

By /s/ RAY F. ARCHIBALD,  
Asst. Vice President.

Duly verified.

Know All Men by These Presents, That Ray F. Archibald, Asst. V. P., The Continental State Bank, Boise, Idaho, does hereby certify and declare that a certain mortgage bearing date the 5th day of January, A.D. 1957, made and executed by Wickahoney Sheep Company the party of the first part therein, to Continental State Bank, Boise, Idaho, the party of the second part therein, filed for record as No. 95318 of chattel mortgages and indexed in Book.... of Minutes of Mortgages of Personal Property, on page.... of the Public Records in the office of the County Recorder of the County of Owyhee, State of Idaho, on the 7th day of January,



1957, together with the debt thereby secured, is fully paid, released, satisfied, and discharged.

In Witness Whereof, The said corporation herein first above mentioned has caused its corporate name to be hereunto subscribed and its corporate seal affixed by its Cashier, thereunto duly authorized, this 22nd day of August, A.D. 1957.

[Seal]                      CONTINENTAL STATE BANK,  
Boise, Idaho,

By /s/ RAY F. ARCHIBALD,  
Asst. Vice President.

Duly verified.

Know All Men by These Presents, That Ray F. Archibald, Asst. V. P., The Continental State Bank, Boise Idaho, does hereby certify and declare that a certain mortgage bearing date the 27th day of November, A.D. 1956, made and executed by Wickahoney Sheep Company the party of the first part therein, to Continental State Bank, Boise, Idaho, the party of the second part therein, filed for record as No. 95070 of chattel mortgages and indexed in Book.... of Minutes of Mortgages of Personal Property, on page.... of the Public Records in the office of the County Recorder of the County of Owyhee, State of Idaho, on the 28th day of November, 1956, together with the debt thereby secured, is fully paid, released, satisfied, and discharged.

In Witness Whereof, The said corporation herein first above mentioned has caused its corporate name to be hereunto subscribed and its corporate seal affixed by its Cashier, thereunto duly authorized, this .... day of ....., A.D., 19.....

[Seal]                      CONTINENTAL STATE BANK,  
Boise, Idaho,

By /s/ RAY F. ARCHIBALD,  
Asst. Vice President.

Duly verified.

Know All Men by These Presents, That Ray F. Archibald, Asst. V. P., The Continental State Bank, Boise, Idaho, does hereby certify and declare that a certain mortgage bearing date the 17th day of September, A.D. 1956, made and executed by Wickahoney Sheep Company the party of the first part therein, to Continental State Bank, Boise, Idaho, the party of the second part therein, filed for record as No. 94865 of chattel mortgages and indexed in Book .... of Minutes of Mortgages of Personal Property, on page.... of the Public Records in the office of the County Recorder of the County of Owyhee, State of Idaho, on the 1st day of October, 1956, together with the debt thereby secured, is fully paid, released, satisfied, and discharged.

In Witness Whereof, The said corporation herein first above mentioned has caused its corporate name



to be hereunto subscribed and its corporate seal affixed by its Cashier, thereunto duly authorized, this 22nd day of August, A.D. 1957.

[Seal]                      CONTINENTAL STATE BANK,  
Boise, Idaho,

By/s/ RAY F. ARCHIBALD,  
Asst. Vice President.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 11, 1957.

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[Title of District Court and Cause.]

MINUTE ORDER—OCTOBER 4, 1957

Judge Murphy.

This matter came on for hearing on defendant's motion to deposit. Willis E. Sullivan appearing as counsel for the plaintiff and John B. Hawley, Jr. appearing as counsel for the defendants. After hearing the motion the Court granted the motion.

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[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

Come now the above-named plaintiffs and move this Honorable Court for an Order permitting

plaintiffs to file their Supplemental Complaint for the reasons and upon the grounds set forth in said Supplemental Complaint, copy of which is hereto attached as Exhibit A and made a part hereof.

/s/ W. H. LANGROISE,

/s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

Service of Copy acknowledged.

[Endorsed]: Filed October 4, 1957.

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[Title of District Court and Cause.]

MOTION FOR APPOINTMENT OF TEMPORARY RECEIVER AND ORDER TO SHOW CAUSE WHY A PERMANENT RECEIVER SHOULD NOT BE APPOINTED

Comes now one of the defendants, Wickahoney Sheep Company, an Idaho corporation, and moves this Court for the appointment of a temporary receiver of all of the property of the defendant, Wickahoney Sheep Company, with the usual powers and with power to mortgage so much of the property in his hands as may be necessary to administer and preserve all of the property which will come into his possession in good condition, and for an order to show cause why a permanent receiver should not be appointed until such time as this controversy may be heard and finally adjudged.

This motion is based on the affidavit of Jess B. Hawley, Jr., attached hereto, the files and records of this case, Rule 66 of the Federal Rules of Civil Procedure, and Rule 19 of the United States District Court for the District of Idaho.

Dated at Boise, Idaho, this 4th day of October, 1957.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendant Wickahoney Sheep Company.

[Endorsed]: Filed October 4, 1957.

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[Title of District Court and Cause.]

AFFIDAVIT

State of Idaho,  
County of Ada—ss.

Jess B. Hawley, Jr., being first duly sworn on oath deposes and says:

1. That he is a member of the firm of Hawley & Hawley, attorneys at law, Boise, Idaho, which firm represents the defendant, Wickahoney Sheep Company, in this action, and as such is familiar with the corporation, its books and accounts, and its present business operations;

2. That the principal property of the Wicka-

honey Sheep Company is the band of sheep which is the subject matter of this controversy.

3. That the Wickahoney Sheep Company has operated at a loss during this past season and is at the present time without any funds whatever to maintain and care for the sheep;

4. That as of the 1st day of October, 1957, wages due the shepherders who are in charge of the sheep are three months in arrears, and the shepherders have threatened to immediately leave the employ of Wickahoney Sheep Company, which would result in abandonment of the sheep;

5. That because of this controversy, the Wickahoney Sheep Company is unable to obtain any funds for the care and maintenance of said sheep, by either selling or mortgaging any of the band of sheep, its only property;

6. That unless the Wickahoney Sheep Company is able to obtain funds to pay the shepherders and to otherwise care for and maintain the sheep, it will be impossible for it to preserve the subject matter of this controversy;

7. That affiant is informed and believes that an emergency exists requiring the immediate appointment of a receiver of all of the property of Wickahoney Sheep Company.

/s/ JESS B. HAWLEY, JR.

Subscribed and sworn to before me this 4th day of October, 1957.

[Seal]      /s/ GORDON C. SMITH,  
Notary Public for Idaho.

[Endorsed]: Filed October 4, 1957.

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[Title of District Court and Cause.]

ORDER AUTHORIZING DEPOSIT  
IN COURT

This cause came on regularly for hearing before the Honorable Edward P. Murphy, on the 4th day of October, 1957, at the hour of 10 o'clock a.m., upon the motion of the defendant, Bank of Idaho, to deposit in court, Jess B. Hawley, Jr., appearing for the defendants, and W. R. Sullivan appearing for the plaintiffs, whereupon the Court, after consideration of the motion and after argument of counsel for the respective parties, and good cause appearing therefor, does order as follows:

1. That the motion of the defendant, Bank of Idaho, be and the same is hereby granted;
2. That defendant, Bank of Idaho, be authorized to deposit in the registry of this court all bills of sale, the executed copy of the purchase agreement, and any other documents theretofore es-crowed with it by the plaintiffs and defendant, Wickahoney Sheep Company.

Further, that the defendant, Bank of Idaho, be authorized to deposit with the registry of this court the original chattel mortgages referred to in Paragraph IV(c) of the complaint, together with the satisfactions of chattel mortgages related thereto.

Dated this 4th day of October, 1957.

/s/ EDWARD P. MURPHY,  
Judge of the United States District Court for the  
District of Idaho.

[Endorsed]: Filed October 5, 1957.

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[Title of District Court and Cause.]

### MOTION FOR APPOINTMENT OF RECEIVER

Comes Now One of the defendants, Wickahoney Sheep Company, an Idaho corporation, and respectfully moves this Court to appoint a receiver of the property of defendant Wickahoney Sheep Company, as specifically described in the purchase agreement, Exhibit A to the complaint, being the inventory of personal property attached to said purchase agreement as Exhibit B thereto.

This motion is based on the affidavit of Ciriaco Lezamiz attached hereto, the records, files and proceedings in this case, and pursuant to Rule 66 of the Federal Rules of Civil Procedure and Rule 19 of the United States District Court for the District of Idaho.



Dated this 5th day of October, 1957.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendants.

[Title of District Court and Cause.]

AFFIDAVIT

State of Idaho,  
County of Ada—ss.

Ciriaco Lezamiz, being first duly sworn, upon his oath deposes and says:

1. That he is over the age of 21 years, a resident of the State of Idaho, ad the duly elected, qualified and acting president of defendant Wickahoney Sheep Company, and the general manager thereof;

2. That in his capacity as general manager of Wickahoney Sheep Company, he is completely familiar with the business of the corporation and its books, records and accounts;

3. That the principal asset of the Wickahoney Sheep Company is the interest of said company in the band of sheep and other personal property, the same being the subject matter of this litigation;

4. That Wickahoney Sheep Company has operated at substantial losses since its organization and the commencement of its business; that at the pres-



ent time defendant Wickahoney Sheep Company is without funds whatever to maintain, preserve and care for the sheep and personal property, and is in an insolvent condition; that at the present time there is a payroll past due and owing to the sheepherders employed by defendant Wickahoney Sheep Company for the purpose of caring for and tending said sheep, in the amount of approximately \$4,274.59, of which approximately \$900.00 is past due affiant for salary and expenses; that at the present time the cash on hand and in the bank accounts of defendant Wickahoney Sheep Company is approximately \$948.00; that in addition Wickahoney Sheep Company is obligated on promissory notes and equipment contracts in the amount of \$18,000.00, all of which are due and payable or will become due and payable in the immediate future;

5. That the employees of Wickahoney Sheep Company, and in particular the sheepherders above referred to have threatened to leave the employ of Wickahoney Sheep Company unless their wages are immediately paid, which situation would result in the abandonment of the sheep and other personal property involved in this litigation;

6. That as a direct result of this litigation Wickahoney Sheep Company is unable to obtain the necessary funds to properly care for and preserve the property being the subject of the contract here involved in litigation;

7. Affiant states that Wickahoney Sheep Com-

pany has no quick assets which can be converted to cash for the maintenance, care and preservation of said band of sheep and said property;

8. Affiant states and represents that an emergency exists, requiring the immediate appointment of a receiver of said described property to prevent its abandonment and deterioration and in order to preserve and maintain the same.

/s/ CIRIACO LEZAMIZ.

Subscribed and sworn to before me this 5th day of October, 1957.

[Seal]      /s/ M. F. LANE,  
Notary Public for Idaho.

Service of Copy acknowledged.

[Endorsed]: Filed October 5, 1957.

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[Title of District Court and Cause.]

MINUTE ORDER—OCTOBER 8, 1957

Judge Taylor.

This cause came on regularly this date in open court for hearing on plaintiff's motion to file a supplemental complaint and defendant's motion for appointment of a receiver; Willis Sullivan appearing as counsel for the plaintiffs and Jess B. Hawley, Jr., appearing as counsel for the defendants.

After a discussion between the Court and counsel of the respective parties, both motions were granted. It was stipulated between counsel that they would agree as to whom the receiver shall be and then notify the Court.

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[Title of District Court and Cause.]

### SUPPLEMENTAL COMPLAINT

Come now the plaintiffs and file this supplement to their Complaint in the above entitled action, and allege as follows:

#### I.

That subsequent to the time when plaintiffs' Complaint was filed in the above-entitled action, the plaintiffs are informed and believe, and therefore and upon that ground allege the facts to be that defendant, Wickahoney Sheep Company, paid over and delivered to defendant, Bank of Idaho, moneys and funds in excess of the sum of \$100,000.00, the exact amount being unknown to plaintiffs; that all said moneys and funds so paid over and delivered by defendant, Wickahoney Sheep Company, to defendant, Bank of Idaho, were derived from the sale of plaintiffs' wool, sheep and increase and lambs born of said sheep which were being sold by plaintiffs to defendant, Wickahoney Sheep Company, under said purchase agreement, as alleged in plaintiffs' Complaint; that the sale of said wool, sheep and the increase in lambs thereof by defendant,

Wickahoney Sheep Company, was subsequent to the notice of default under said purchase agreement given by plaintiffs to defendant, Wickahoney Sheep Company, and subsequent to the forfeiture of said purchase agreement by plaintiffs, as alleged in plaintiffs' complaint on file herein; that all of said above mentioned facts and circumstances were well known to defendant, Bank of Idaho; that plaintiffs are entitled to have all of said moneys and funds so paid by defendant, Wickahoney Sheep Company, to defendant Bank of Idaho, as aforesaid, paid over and delivered to plaintiffs to satisfy any judgment obtained in this action by plaintiffs against said defendant, Wickahoney Sheep Company.

Wherefore, plaintiffs pray that other and further relief be granted to them as follows:

That plaintiffs have judgment against defendant, Bank of Idaho, for all moneys and funds paid over and delivered to it by defendant, Wickahoney Sheep Company, which moneys and funds were derived from the sale of plaintiffs' sheep and the lambs and increase thereof, and that defendant, Bank of Idaho, be held to account to plaintiffs for all said moneys and funds.

/s/ W. H. LANGROISE,

/s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

Service of Copy acknowledged.

[Endorsed]: Filed October 11, 1957.

[Title of District Court and Cause.]

## ORDER APPOINTING RECEIVER

This matter having come on for hearing before the above-entitled court, at 3:30 p.m., on the 8th day of October, 1957, on the motion of the defendant Wickahoney Sheep Company for appointment of a receiver, Jess B. Hawley, Jr., of Hawley & Hawley appearing for the defendant Wickahoney Sheep Company, and W. E. Sullivan of Langroise and Sullivan appearing for the plaintiffs, and the Court having heard argument and considered the matter, and good cause appearing therefor;

It Is Hereby Ordered:

1. That the motion of defendant Wickahoney Sheep Company for appointment of a receiver should be and the same is hereby granted, and Blaine Austin, Elko, Nevada, is hereby appointed receiver in the above-entitled action, and he shall, before entering upon the discharge of his duties, file with the clerk of this Court a good and sufficient surety bond, to be approved by this Court, in the penalty of \$5,000.00.

2. Immediately after his qualification, said Blaine Austin shall, as receiver, take possession of all of the property of the defendant Wickahoney Sheep Company, and shall accurately inventory the same and file a copy of said inventory with the Court. Said receiver is directed to operate and conduct the business of defendant Wickahoney



Sheep Company to the extent necessary to conduct and preserve the same in like condition as at the present, and subject to the further order of this Court.

Dated this 9th day of October, 1957.

/s/ FRED M. TAYLOR,  
Judge of the United States District Court for the  
District of Idaho.

[Endorsed]: Filed October 11, 1957.

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[Title of District Court and Cause.]

## RECEIPT FOR DOCUMENTS DEPOSITED IN REGISTRY OF COURT

Pursuant to order heretofore entered in the above-entitled proceedings, authorizing the deposit in the registry of the Court of certain documents by defendant Bank of Idaho, receipt is hereby acknowledged by the clerk of the above-captioned Court of the following documents from defendant Bank of Idaho this 11th day of October, 1957, to wit:

Item 1: Original escrow agreement dated December 15, 1955, by and between C. A. Sewell and Orene H. Sewell as grantors and Wickahoney Sheep Company as grantee, and Continental State Bank as escrow holder.

Item 2: Original executed copy of purchase

agreement dated December 15, 1955, by and between C. A. Sewell and Orene H. Sewell as sellers and Wickahoney Sheep Company as purchaser.

Item 3. Bill of sale, together with inventory attached thereto and made a part thereof, by and between C. A. Sewell and Orene H. Sewell, parties of the first part, and Ruby Company as party of the second part.

Item 4: Executed copy of assignment of purchase agreement dated December 15, 1955, by and between C. A. Sewell and Orene H. Sewell as assignors and Orville R. Wilson as assignee.

Item 5: Chattel mortgage dated September 17, 1956, from Wickahoney Sheep Company to Continental State Bank, in the amount of \$50,000, showing release and satisfaction thereof as of August 27, 1957.

Item 6: Chattel mortgage dated November 1, 1956, from Wickahoney Sheep Company to Continental State Bank, in the amount of \$50,000, showing release and satisfaction thereof as of August 27, 1957.

Item 7: Chattel mortgage dated November 27, 1956, from Wickahoney Sheep Company to Continental State Bank, in the amount of \$65,000, showing release and satisfaction thereof as of August 27, 1957.

Item 8: Chattel mortgage dated January 5, 1957, from Wickahoney Sheep Company to Continental



State Bank, in the amount of \$100,000, showing release and satisfaction thereof as of August 27, 1957.

Dated this 11th day of October, 1957.

/s/ ED M. BRYAN,  
Clerk.

[Endorsed]: Filed October 11, 1957.

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[Title of District Court and Cause.]

### BOND OF RECEIVER

Know All Men by These Presents:

That I, Blaine Austin, as Principal, and United States Fidelity and Guaranty Company, a corporation authorized to transact a surety business in the State of Idaho, as Surety, are hereby firmly held and bound unto the District Court of the United States for the District of Idaho, Southern Division and unto the plaintiff and unto the defendant in this action, in the sum of Five Thousand (5,000.00) Dollars, for the payment of which sum well and truly to be made we hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

Dated this ninth day of October, 1957.

Whereas, by an order in the above-named case issued by the District Court of the United States

for the District of Idaho, Southern Division, and dated the ninth day of October, 1957, the above-named principal, Blaine Austin, was appointed receiver to take charge and possession of the property of the defendant corporation and is in the order appointed said receiver more specifically set forth and hereby referred to upon his filing a bond in the sum of \$5,000.00.

Now, Therefore, If the said Blaine Austin, as such receiver shall faithfully discharge the duties of such receiver in the said action and obey the orders of the court therein, then this obligation shall be void, otherwise it shall remain in full force and effect.

In Witness Whereof, the said principal has executed this bond and United States Fidelity and Guaranty Company has caused this bond to be executed by its agent at Boise, Idaho.

/s/ BLAINE AUSTIN,  
Principal.

[Seal] UNITED STATES FIDELITY  
& GUARANTY CO.,

By /s/ JAMES W. PERRY,  
Attorney-in-Fact.

Countersigned:

/s/ JAMES W. PERRY AGENCY,  
Boise, Idaho.

[Endorsed]: Filed October 14, 1957.

[Title of District Court and Cause.]

### OATH OF RECEIVER

State of Idaho,  
County of Ada—ss.

I, Blaine Austin, do solemnly swear that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as receiver in the above-entitled action, according to the best of my abilities and understanding, and in accordance with the requirements of the Constitution and the laws of the United States, so help me God.

/s/ BLAINE AUSTIN.

Subscribed and sworn to before me this 9th day of October, 1957.

[Seal] ED M. BRYAN,  
Clerk of the United States District Court for the  
District of Idaho,

By /s/ PAUL BOYER.

[Edorsed]: Filed October 14, 1957.

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[Title of District Court and Cause.]

### INTERROGATORIES TO DEFENDANT WICKAHONEY SHEEP COMPANY

To Wickahoney Sheep Company, one of the above-named Defendants:

You Are Hereby Notified to answer, under oath, the interrogatories of the above-named plaintiffs set forth below, within fifteen (15) days of the time service is made upon you, in accordance with Rule 33 of the Federal Rules of Civil Procedure:

Interrogatory No. 1: Did Wickahoney Sheep Company borrow any money from the Bank of Idaho (formerly Continental State Bank), since October 18, 1955, and if so, in what amounts, and on what dates?

Interrogatory No. 2: Describe in detail all security which Wickahoney Sheep Company gave to the Bank of Idaho for all loans by the Bank of Idaho to Wickahoney Sheep Company since October 18, 1955.

Interrogatory No. 3: Describe in detail all other security given for said loans described in Interrogatory No. 1 other than security given by Wickahoney Sheep Company, and by whom each such other security given.

Interrogatory No. 4: Were any of the loans made by the Bank of Idaho to Wickahoney Sheep Company guaranteed by any other person, firm, association, partnership, or corporation, and if so, the names of such guarantors?

Interrogatory No. 5: For what purposes did Wickahoney Sheep Company use any and all moneys borrowed by it from the Bank of Idaho?

Interrogatory No. 6: Has Wickahoney Sheep

Company borrowed any moneys from any other person, firm, association, partnership, or corporation, other than the Bank of Idaho, since October 18, 1955, and if so, from whom, and on what dates, and in what amounts?

Interrogatory No. 7: Describe in detail all security given for said loans mentioned in Interrogatory No. 6, and by whom was such security given.

Interrogatory No. 8: If Wickahoney Sheep Company borrowed any moneys described in Interrogatory No. 6, for what purpose did Wickahoney Sheep Company use said moneys?

Interrogatory No. 9: Have any loans, or any part thereof, made by the Bank of Idaho, or any other person, firm, association, partnership or corporation to Wickahoney Sheep Company been paid, and if so, by whom, and in what amounts, and on what dates?

Interrogatory No. 10: If Wickahoney Sheep Company has paid any of the loans, or any part thereof, as set forth in Interrogatory No. 9, from what source did Wickahoney Sheep Company obtain the moneys to make such payments?

Interrogatory No. 11: Have any of the ewes or bucks being sold to Wickahoney Sheep Company by the plaintiffs under that certain purchase agreement dated December 15, 1955, between C. A. Sewell and Orene H. Sewell, husband and wife, and Wickahoney Sheep Company, a copy of which purchase



agreement is attached to the complaint in this action as Exhibit A, or any of the lambs or increase thereof, or any of the wool obtained from the same been sold, and if so, what was sold, and to whom, and on what dates, and what was the sale price for each of said sales?

Interrogatory No. 12: What use did Wickahoney Sheep Company make of all the funds received from the sales described in Interrogatory No. 11, and to whom were said funds expended, and in what amounts, and on what dates?

Interrogatory No. 13: Describe by their ages all the ewes and bucks, and the lambs and increase thereof, being sold to Wickahoney Sheep Company under said purchase agreement, a copy of which is attached to the complaint in this action as Exhibit A, which now remain in the possession or under the control of Wickahoney Sheep Company, or the receiver appointed in this action?

Interrogatory No. 14: Has that certain lease dated October 18, 1955, between C. A. Sewell and Orene H. Sewell, as lessors, and Wickahoney Sheep Company, as lessee, and the modification of said lease dated December 15, 1955, been assigned by Wickahoney Sheep Company to the Ruby Company, a Utah corporation, and if so, does said Ruby Company still hold said lease and modification of lease as assignee? What compensation, if any, was paid by Ruby Company to Wickahoney Sheep Company for said assignment?



Interrogatory No. 15: Has the Ruby Company ever loaned any money to Wickahoney Sheep Company since October 18, 1955, and if so, what amounts, and on what dates, and what was the security for said loans?

Interrogatory No. 16: If the Ruby Company ever loaned any money to Wickahoney Sheep Company since October 18, 1955, have any of said loans, or any part thereof, been repaid, and if so, in what amounts, and on what dates?

Interrogatory No. 17: Has Wickahoney Sheep Company loaned any moneys to Ruby Company since October 18, 1955, and if so, the amount of said loans, and the dates thereof, and what security was given therefor?

Interrogatory No. 18: If Wickahoney Sheep Company made any loans to Ruby Company, as set forth in the preceding Interrogatory, have any of said loans been paid, or any part thereof been repaid, and if so, in what amounts, and on what dates?

Interrogatory No. 19: Describe in detail all contracts and agreements entered into between the Wickahoney Sheep Company and the Ruby Company since October 18, 1955.

Interrogatory No. 20: Who have been the officers and directors of Wickahoney Sheep Company during the period from October 18, 1955, to the present time?

Interrogatory No. 21: Who have been the stockholders of Wickahoney Sheep Company during the period from October 18, 1955, to the present time, and how many shares of the common stock of Wickahoney Sheep Company have been, and now are, owned by each of said stockholders?

Interrogatory No. 22: Are any of the stockholders of Wickahoney Sheep Company also stockholders of Ruby Company?

Interrogatory No. 23: Does Wickahoney Sheep Company own any sheep, or is it purchasing any sheep, on contract, or otherwise, other than the ewes and bucks, and the lambs and increase thereof, described in the purchase agreement dated December 15, 1955, between C. A. Sewell and Orene H. Sewell, husband and wife, as sellers, and Wickahoney Sheep Company, as purchaser, a copy of which purchase agreement is attached to the complaint in this action as Exhibit A, and if so, a detailed description of such sheep?

LANGROISE & SULLIVAN,  
Attorneys for Plaintiffs.

Service of Copy acknowledged.

[Endorsed]: Filed October 22, 1957.

[Title of District Court and Cause.]

INTERROGATORIES TO DEFENDANT,  
BANK OF IDAHO

To Bank of Idaho, one of the above-named Defendants:

You Are Hereby Notified to answer, under oath, the interrogatories of the above-named plaintiffs set forth below, within fifteen (15) days of the time service is made upon you, in accordance with Rule 33 of the Federal Rules of Civil Procedure:

Interrogatory No. 1: What loans were made by the Bank of Idaho (formerly Continental State Bank) to Wickahoney Sheep Company, since October 18, 1955, and the amount of said loans, and the dates on which said loans were made?

Interrogatory No. 2: Describe in detail all security given for said loans referred to in Interrogatory No. 1.

Interrogatory No. 3: Were any of said loans to Wickahoney Sheep Company referred to in Interrogatory No. 1 guaranteed by any person, firm, association, partnership or corporation, and if so, by whom?

Interrogatory No. 4: Did the Bank of Idaho inform the plaintiffs, or any of them, of said loans made by it to Wickahoney Sheep Company?

Interrogatory No. 5: For what purpose were loans made by the Bank of Idaho to Wickahoney

Sheep Company, and what use did Wickahoney Sheep Company make of said moneys so loaned to it?

Interrogatory No. 6: Have the loans made by the Bank of Idaho to Wickahoney Sheep Company been paid, or any part thereof, and if so, by whom were said payments made, and on what dates?

Interrogatory No. 7: If any of said loans, or any part thereof, made by the Bank of Idaho to Wickahoney Sheep Company have been paid by Wickahoney Sheep Company, from what source did Wickahoney Sheep Company obtain the money to make such payments?

Interrogatory No. 8: Did the Bank of Idaho ever obtain possession or control of any property given as security to the Bank of Idaho for loans made by it to Wickahoney Sheep Company, and if so, what disposition was made by the Bank of Idaho of such property?

LANGROISE & SULLIVAN,  
Attorneys for Plaintiffs.

[Endorsed]: Filed October 22, 1957.

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[Title of District Court and Cause.]

## INVENTORY OF RECEIVER

Comes Now the receiver in the above-entitled action and submits herewith to this Honorable Court

his Inventory of all of the assets of defendant, Wickahoney Sheep Company, which have been discovered by him. Said assets are set forth in Exhibit A, attached hereto and by reference made a part hereof.

In addition to the assets listed on said Exhibit A, there is also funds of defendant, Wickahoney Sheep Company, on deposit in the Bank of Idaho at Boise, Idaho, the amount of which is presently unknown; and there is also a U. S. Government Wool Subsidy, the amount of which is presently unknown.

/s/ BLAINE AUSTIN,  
Receiver.

### EXHIBIT A

- 1—McCormick #13652 400 Tractor.
- 1—McCormick 2-Way Tractor Plow #34F21.
- 1—McCormick Disk (Tractor).
- 1—1951 Chev. Pickup Motor #JBA753268  
Ser. #6PJPF10512.
- 200 Water Tubs.
- 12 Water Troughs.
- 1—Portable 1600 ga. tank.
- 1—Farmhand heavy duty.
- 1—McCormick Power Mower.
- 2—Stone Boats.
- 1—Harrow.
- 1—Hookup to carry things on tractor (spray).

- 1—Corrugator (tractor).
- 1—McCormick side delivery rake.
- 1—McCormick Loader.
- 2—Chopped hay racks.
- 1—Full set harrows.
- 1—Chattin ditcher.
- 1—McCormick 400 Manure Spreader.
- 2—Wagon Running Gears.
- 1—Handy-Way Bale Loader and Conveyor.
- 1—1200 gal. Portable Tank.
- 1—Bearcat Chopper (hay).
- 50 T. Chopped Hay.
- 1—Derrick.
- 1—Grain Tank (1800).
- 1800 bu. Oats.
- 250 bales Straw.
- 12—Lambing Shed Canvas.
- 1—500 gal. Portable Tank.
- 5—Camp Wagons.
- 4—Commissary Wagons.
- 6—Sets Harness.
- 6—Saddles.
- 200 Panels (lumber).
- 1—Wisconsin Water Pump and Motor.
- Miscellaneous Equipment.
- 550 tons Hay (estimate).
- 1—Heater.
- 1—Deep Freeze (G.E.).
- 1—Pressure System in house.
- 1—Electric Range (Hotpoint).
- 1—Electric Refrigerator.
- 1—Dining Table.



2—Benches.

Misc. Dishes.

1—Arc Welder.

1955 Chevrolet 2-Ton Truck.

#### Livestock

44 Bucks.

100 Small Lambs.

3187 Ewes.

8 Work Horses.

8 Saddle Horses.

1 Milk Cow.

1 Yearling.

Service of copy acknowledged.

[Endorsed]: Filed October 25, 1957.

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[Title of District Court and Cause.]

#### STIPULATION FOR SALE OF PROPERTY

It Is Hereby Stipulated and Agreed by and between all of the parties in the above-entitled action that the above-entitled court may authorize and direct the Receiver in the above-entitled action to sell all of the livestock of defendant, Wickahoney Sheep Company, including, but not limited to, the following: 44 bucks, 100 small lambs, 3187 ewes, 8 work horses, 8 saddle horses, 1 milk cow, and 1 yearling.

And Further that the sale of said livestock shall be for the best price obtainable by the Receiver,

and may be either at public or private sale, and in such lots or quantities as the Receiver in his discretion may determine.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,

Attorneys for Defendants.

[Endorsed]: Filed October 26, 1957.

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[Title of District Court and Cause.]

### ORDER FOR SALE OF PROPERTY

Pursuant to the Stipulation of the parties in the above-entitled action on file herein,

It Is Hereby Ordered that the Receiver in the above-entitled action is hereby authorized and directed to sell all of the livestock of defendant, Wickahoney Sheep Company, including, but not limited to the following: 44 bucks, 100 small lambs, 3187 ewes, 8 work horses, 8 saddle horses, 1 milk cow, and 1 yearling.

And It Is Further Ordered that the sale of said livestock shall be for the best price obtainable by the Receiver, and may be either at public or private

sale, and in such lots and quantities as the Receiver may in his discretion determine.

Dated: October 26, 1957.

/s/ FRED M. TAYLOR,  
Judge, U. S. District Court.

[Endorsed]: Filed October 26, 1957.

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[Title of District Court and Cause.]

### OBJECTIONS TO INTERROGATORIES

Comes Now the defendant, Wickahoney Sheep Company, and objects to the following designated interrogatories served on said defendant by the plaintiffs in the above-entitled action:

Interrogatories Numbered 3, 4, 5, 6, 7, 8, 14, 15, 16, 17, 18 19 and 22.

Objection is made to the aforesaid interrogatories upon the grounds and for the reasons that the same are immaterial and irrelevant and do not tend to prove or disprove any of the issues involved in this litigation; that the Ruby Company is not a party defendant in said action; that the demand of the plaintiffs is limited to the return of the property covered by the purchase agreement, or the sum of \$225,100.00 from defendant, Wickahoney Sheep Company, and an accounting from defendant, Bank of Idaho, of monies paid to it by defendant, Wick-

ahoney Sheep Company, derived from the sale of the sheep, being the subject matter of the contract.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,

Attorneys for defendant,  
Wickahoney Sheep Co.

Service of copy acknowledged.

[Endorsed]: Filed November 1, 1957.

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[Title of District Court and Cause.]

### OBJECTIONS TO INVENTORY OF RECEIVER

Come Now The Defendants, and object to the inclusion of the following items to the inventory of the receiver filed herein upon the grounds and for the reasons that the items set forth herein and objected to are not included in or are they a part of the purchase agreement, Exhibit A to the complaint on file herein; that said items are subject to a chattel mortgage, made and entered into between Wickahoney Sheep Company as mortgagor and First Security Bank of Idaho, N.A., on or about the 21st day of August, 1957; that said items objected to are not subject to the receivership:

1—McCormick No. 13652 400 Tractor.

1—McCormick 2-way Tractor Plow No. 34F21.

1—McCormick Disk (tractor).

- 1—1951 Chevrolet Pickup, Motor No. JBA 753268, Serial No. 6PJPF10512.
- 1—Farmhand heavy duty.
- 1—McCormick Power Mower.
- 1—Harrow.
- 1—Corrugator (tractor).
- 1—McCormick side delivery rake.
- 1—McCormick Loader.
- 1—Chattin Ditcher.
- 1—McCormick 400 Manure Spreader.
  - 1,800 bu. oats.
  - 550 tons hay (estimate).
- 1—Deep Freeze (G.E.).
- 1—Electric Refrigerator.
- 1—Arc Welder.
- 1—1955 Chevrolet 2-ton truck (Replaced 1954 1½-ton International).

Dated this 31st day of October, 1957.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendants.

Service of copy acknowledged.

[Endorsed]: Filed November 1, 1957.

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[Title of District Court and Cause.]

### OBJECTION TO INTERROGATORY

Comes Now the Bank of Idaho, and objects to Interrogatory No. 3 which reads as follows:

“Were any of said loans to Wickahoney Sheep Company referred to in Interrogatory No. 1 guaranteed by any person, firm, association, partnership or corporation, and if so, by whom?”

on the ground that the information sought under said Interrogatory is entirely foreign to the issues of the above entitled case, and can have no bearing whatsoever on the issues raised by the pleadings herein; that the demand of the Plaintiffs is limited to the return of the property covered by the purchase agreement, or the sum of \$225,100.00 from Defendant Wickahoney Sheep Company, and an accounting from Defendant Bank of Idaho of monies paid to it by Defendant Wickahoney Sheep Company derived from the sale of the sheep, being the subject matter of the contract.

Dated: November 1st, 1957.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY.

ELAM AND BURKE,

By /s/ LAUREL E. ELAM,

Attorneys for Bank of Idaho.

Service of copy acknowledged.

[Endorsed]: Filed November 1, 1957.



[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES  
BY BANK OF IDAHO

State of Idaho,  
County of Ada—ss.

Comes Now Bank of Idaho, and under oath gives the following answers to the interrogatories submitted.

Interrogatory No. 1:

Answer: Reference is made to schedule attached, showing loans made by Bank of Idaho (formerly Continental State Bank) to Wickahoney Sheep Company since October 18, 1955.

Interrogatory No. 2:

Answer: Security given for said loans referred to in Interrogatory No. 1 consists of chattel mortgages now on file with the Court, and fully described in Receipt for Documents deposited in registry of Court, dated October 11, 1957.

Interrogatory No. 3:

Answer: Objection has been filed with the Court in connection with this Interrogatory under date of November 1, 1957.

Interrogatory No. 4:

Answer: The Bank of Idaho did not inform the Plaintiffs, or any of them, of said loans made by it to Wickahoney Sheep Company, excepting as

to the recording of chattel mortgages described in Receipt for Documents deposited in Registry of Court under date of October 11, 1957.

Interrogatory No. 5:

Answer: Loans made by the Bank of Idaho to Wickahoney Sheep Company were made for the purpose to provide operating capital for the company. The Bank of Idaho has no knowledge of what use the Wickahoney Sheep Company made of said monies so loaned to it.

Interrogatory No. 6:

Answer: All loans made by the Bank of Idaho to Wickahoney Sheep Company have been paid. Reference is made to Schedule of Loans attached for answer to the question "By whom were said payments made, and on what dates."

Interrogatory No. 7:

Answer: Reference is made to the Schedule of Loans attached to show how payment was made by Wickahoney Sheep Company and from what sources Wickahoney Sheep Company obtained the money to the extent such information is available from the records of the **Bank of Idaho**.

Interrogatory No. 8:

Answer: No.

**BANK OF IDAHO,**

By /s/ JAMES BYERS,  
Sr. Vice President.

Subscribed and sworn to by James Byers before  
me this 4th day of November, 1957.

[Seal]      /s/ LAUREL E. ELAM,  
Notary Public for Idaho,  
Residing at Boise, Idaho.

HAWLEY & HAWLEY,  
By /s/ JESS B. HAWLEY.

ELAM AND BURKE,  
By /s/ LAUREL E. ELAM,  
Attorneys for Bank of Idaho.

Schedule of Loans Made to Wickahoney Sheep Company  
Since October 18, 1955, and Source of Payment for Such Loans

Loan No.	Date Made	Amount	Date Paid	Source of Payment
4452	10/17/55	\$20,000.00	6/14/56	Renewal
4477	10/20/55	20,000.00	1/21/56	Renewal
4570	11/ 1/55	10,000.00	1/21/56	Renewal
4746	11/28/55	10,000.00	1/21/56	Renewal
5090	1/ 7/56	10,000.00	6/15/56	Renewal Larger
5159	1/13/56	15,000.00	6/14/56	Renewal Larger
5217	1/21/56	40,000.00	6/15/56	Renewal Larger
5297	2/ 4/56	5,000.00	6/14/56	Renewal Larger
6459	5/ 9/56	20,000.00	6/14/56	Renewal Larger

0	6/14/56	50,000.00	7/20/56	\$30,000.00 paid on account with check of Wickahoney Sheep Co. drawn on Bank of Idaho
			9/18/56	\$20,000.00 Renewal Larger
1	6/15/56	50,000.00	8/ 9/56	\$20,000.00 paid on account with check of Wickahoney Sheep Co. drawn on Bank of Idaho
			9/18/56	\$30,000.00 Renewal Larger
6	9/17/56	50,000.00	11/ 5/56	Renewal
4	11/ 5/56	50,000.00	11/27/56	Renewal Larger
5	11/27/56	65,000.00	1/ 5/57	Renewal Larger
1	1/ 5/57	100,000.00	See Schedule	See Schedule



Check No.  
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## Schedule of Payments Received on Loan No. 8191, Dated 1/5/57, in the amount of \$100,000.00

Check No.	Date	Maker	Payee	Drawee	Endorsement	Amount	Payment A/C Int.	Payment A/C Prin.
5167	7/ 2/57	John Clay & Co.	Wickahoney Sheep Co.	Ogden Branch 1st Sec. Bank of Ogden	Pay to Bank of Idaho Wickahoney Sheep Co. By Ciriaco Lezamiz, President	\$25,713.31	\$ 2,734.72	\$22,978.59
1110	7/ 6/57	John Clay & Co.	Wickahoney Sheep Co.	Ogden Branch 1st Sec. Bank of Ogden	Pay to Bank of Idaho Wickahoney Sheep Co. By John M. Dahl, Treasurer	22,357.13	82.37	22,274.76
62173809	7 17 57	Commodity Credit Corp Sight Draft	Wickahoney Sheep Co.	Fed. Res. Bank	Pay to Bank of Idaho Wickahoney Sheep Co. By John M. Dahl Treasurer	2,866.51		
62173813	7/22/57	Commodity Credit Corp Sight Draft	Wickahoney Sheep Co.	Fed. Res. Bank	Pay to Bank of Idaho Wickahoney Sheep Co. By John M. Dahl Treasurer	11,704.11 <hr/> 14,570.62	133.83	14,436.79
5174	8 14 57	John Clay & Co.	Wickahoney Sheep Co.	Ogden Branch 1st Sec. Bank of Ogden	Credited to the acct. of Wickahoney Sheep Co. Bank of Idaho	24,470.38	129.33	24,341.05
	8 22/57	Wickahoney Sheep Co	Bank of Idaho	Bank of Idaho	Un-endorsed Account credited	2,441.77		
661	8 15 57	Swift & Company	Wickahoney Sheep Co.	Swift & Co. draft thru Commercial Sec. Bank of Ogden	Stamp endorsement obliterated	700.00		
671	8 21 57	Swift & Company	Wickahoney Sheep Co.	Swift & Co. draft thru Commercial Sec. Bank of Ogden	Credited to the acct. of Wickahoney Sheep Co. Bank of Idaho	11,169.68		
	8 5 57	Western Idaho Production Credit Assn.	Wickahoney Sheep Co. (As Seller)	Western Idaho Production Credit Assn. Draft	Harvey Groefsmma (Buyer)	1,672.00 <hr/> 15,983.45	14.64	15,968.81

Service of copy acknowledged.

[Endorsed]: Filed November 4, 1957.



[Title of District Court and Cause.]

## ANSWERS TO INTERROGATORIES

Comes Now the Defendant Wickahoney Sheep Company and, in response to the interrogatories directed to Defendant pursuant to Rule 33, Federal Rules of Civil Procedure, makes the following answers to the said interrogatories:

Answer to Interrogatory No. 1: Wickahoney Sheep Company borrowed money from the Bank of Idaho in the following amounts and on the following dates:

Loan #	Date Made	Amount	Date Paid
4477	10/20/55	\$ 20,000.00	1/21/56
4570	11/ 1/55	10,000.00	1/21/56
4746	11/28/55	10,000.00	1/21/56
5090	1/ 7/56	10,000.00	6/15/56
5159	1/13/56	15,000.00	6/14/56
5217	1/21/56	40,000.00	6/15/56
5297	2/ 4/56	5,000.00	6/14/56
6459	5/ 9/56	20,000.00	6/14/56
6660	6/14/56	50,000.00	7/20/56
6661	6/15/56	50,000.00	8/ 9/56
7376	9/17/56	50,000.00	11/ 5/56
7694	11/ 5/56	50,000.00	11/27/56
7885	11/27/56	65,000.00	1/ 5/57
8191	1/ 5/57	100,000.00	Paid in installments final payment 8/5/57

Answer to Interrogatory No. 2: The security given by Wickahoney Sheep Company to the Bank of Idaho, securing the loans described in Answer to Interrogatory No. 1, are as follows:

1. Chattel mortgage, recording No. 94875, dated September 17, 1956, in the amount of \$50,000.00;
2. Chattel mortgage, recording No. 94975, dated November 1, 1956, in the amount of \$50,000.00;

3. Chattel mortgage, recording No. 95070, dated November 27, 1956, in the amount of \$65,000.00;

4. Chattel mortgage, recording No. 95318, dated January 5, 1957, in the amount of \$100,000.00.

The original chattel mortgages hereinabove set forth, together with the satisfactions thereof, have been deposited in the registry of this Court, pursuant to order thereof.

Answer to Interrogatories No. 3 through 8 inclusive: Objection thereto heretofore filed with the Court on or about October 31, 1957.

Answer to Interrogatory No. 9: Answered by answer to Interrogatory No. 1.

Answer to Interrogatory No. 10: Wickahoney Sheep Company obtained the monies from the sale of sheep, wool and lambs.

Answer to Interrogatory No. 11: See Exhibit A attached hereto and made a part of this answer, the same being designated "Summary of Sales."

Answer to Interrogatory No. 12: In addition to the payments made to Bank of Idaho, referred to in the Answer to Interrogatory No. 1, the funds referred to were expended generally for expenses incurred in the operation of the business of Wickahoney Sheep Company. The supplying of the detail in connection with said expenditures will entail a complete and itemized audit of the books of Defendant corporation, it being impossible to complete said audit and furnish said figures within the time limit herein required for these interrogatories.

## Answer to Interrogatory No. 13:

Ewes, 9 years and older.....	791
Ewes, approximately 3 years.....	450
Ewes, approximately 4 years.....	275
Ewes, 5 and 6 years.....	1,671
Small lambs .....	100
Bucks .....	44

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Total ..... 3,331

Answer to Interrogatories No. 14 through 19 inclusive: Objection thereto heretofore filed with the Court on or about October 31, 1957.

## Answer to Interrogatory No. 20:

Directors: Ciriaco Lezamiz, L. E. Haight, John M. Dahl.

Officers: Ciriaco Lezamiz, President; L. E. Haight, Vice-President; John M. Dahl, Secretary-Treasurer.

Answer to Interrogatory No. 21: 100 shares of the common stock, being all of the outstanding and issued shares thereof, were issued at date of incorporation to Ciriaco Lezamiz, which stock was subsequently sold and transferred to the Ruby Company.

Answer to Interrogatory No. 22: Objection thereto heretofore filed with the Court on or about October 31, 1957.

Answer to Interrogatory No. 23: No.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,

Attorneys for Defendant,  
Wickahoney Sheep Co.





[Title of District Court and Cause.]

MOTION OF RECEIVER FOR DELIVERY  
OF DOCUMENTS

Comes Now Blaine Austin, the Receiver in the above-entitled action, and moves this Honorable Court for an order directing, instructing and ordering defendant, Wickahoney Sheep Company, and the officers thereof, immediately to turn over and deliver to said Receiver all of the books, records, documents, financial statements, books of account, check registers, cancelled checks, and deposit slips, contracts, and all other instruments concerning, dealing with, evidencing or representing all financial transactions of the defendant, Wickahoney Sheep Company.

Dated: November 19, 1957.

/s/ BLAINE AUSTIN,  
Receiver.

Service of copy acknowledged.

[Endorsed]: Filed November 20, 1957.

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[Title of District Court and Cause.]

NOTICE OF HEARING

To: Hawley & Hawley, Attorneys for Defendants,  
and to Elam & Burke, Attorneys for Defendant,  
Bank of Idaho.

Please Take Notice That the undersigned will

bring on for hearing before this court the Objections of Defendants to Inventory of Receiver, the Objections of Defendant, Wickahoney Sheep Company, to Interrogatories, the Objection of Bank of Idaho to Interrogatory, and the Motion of Receiver for Delivery of Documents, in the courtroom of the above-entitled court in the Federal Building, Boise, Idaho, on Wednesday the 27th day of November, 1957, at 11:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated: November 20, 1957.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

Service of copy acknowledged.

[Endorsed]: Filed November 20, 1957.

---

[Title of District Court and Cause.]

## ANSWER TO SUPPLEMENTAL COMPLAINT

Come Now The defendants, and in answer to the supplemental complaint in the above-entitled action, admit, deny and allege as follows:

### I.

Answering Paragraph I, defendants deny each and every allegation therein.

As a first defense and second defense to said supplemental complaint, defendants incorporate herein by reference the first and second defenses to the

original complaint on file herein, as though set out herein in haec verba.

For a third defense, defendants allege that any monies received by defendant Bank of Idaho from or for the account of Wickahoney Sheep Company were in payment of valid and subsisting promissory notes of Wickahoney Sheep Company, secured by chattel mortgages for loans made by defendant Bank of Idaho to defendant Wickahoney Sheep Company; that said chattel mortgages were valid and subsisting obligations of defendant Wickahoney Sheep Company, and payment thereof was authorized by law, and by established certain and general custom.

Wherefore, Defendants Pray That plaintiffs take nothing by virtue of their supplemental complaint on file herein, and that defendants be hence dismissed with their costs in this action necessarily incurred.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY,

Attorneys for Defendant Wickahoney Sheep Company.

ELAM & BURKE,

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY,

Attorneys for Defendant  
Bank of Idaho.

Affidavit of mail attached.

[Endorsed]: Filed November 22, 1957.

[Title of District Court and Cause.]

### MOTION

Comes Now The defendant Wickahoney Sheep Company, an Idaho corporation, and respectfully moves the Court that the order appointing receiver, heretofore filed and entered in the above proceedings on or about October 9, 1957, be amended and qualified to permit the receiver to take possession of only so much of the property of said defendant as is referred to in and covered by the purchase agreement between the plaintiffs C. A. Sewell and Orene H. Sewell and defendant Wickahoney Sheep Company, the same being Exhibit A to the complaint on file herein.

This Motion Is based upon the records and files in this proceedings, and the affidavit of Jess B. Hawley, Jr., attached hereto and made a part hereof.

Dated this 21st day of November, 1957.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY,

Attorneys for Defendant Wickahoney Sheep Company.

AFFIDAVIT

State of Idaho,  
County of Ada—ss.

Jess B. Hawley, Jr., being first duly sworn, deposes and says:

That he is acting in the above proceedings as attorney for defendant Wickahoney Sheep Company; that for and on behalf of said Wickahoney Sheep Company he moved for appointment of a receiver on October 5, 1957, said motion being limited to the appointment of a receiver for the property of defendant Wickahoney Sheep Company as specifically described in the purchase agreement, Exhibit A to the complaint; that thereafter, after hearing before the above-entitled Court on October 8, 1957, the Court granted defendant's motion for appointment of a receiver, and requested affiant to prepare an order in conformance therewith; that, through inadvertence, the order appointing the receiver herein, and as prepared by affiant, authorized the receiver to "take possession of all of the property of the defendant Wickahoney Sheep Company," instead of being limited to the property of said defendant as covered by Exhibit A to the complaint on file; that said order should be amended in accordance with this motion to reflect the proper ruling of this Court, and to correct the inadvertence of counsel.

Further affiant saith not.

/s/ JESS B. HAWLEY, JR.



Subscribed and sworn to before me this 21st day of November, 1957.

[Seal]      /s/ M. F. LANE,  
Notary Public for Idaho.

Affidavit of mail attached.

[Endorsed]: Filed November 22, 1957.

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[Title of District Court and Cause.]

MINUTE ORDER—NOVEMBER 29, 1957

Judge Taylor.

This cause came on regularly this date in open court for hearing on motions and objections to interrogatories, W. E. Sullivan, appearing as counsel for the plaintiffs, Jess B. Hawley, Jr., appearing as counsel for the defendant, Wickahoney Sheep Company, and Laurel Elam appearing as counsel for the defendant, Bank of Idaho.

After a discussion between the Court and counsel for the respective parties, it was ordered that the motion to amend order appointing receiver be denied, the objections to inventory of receiver be denied, the objections to interrogatories of both defendants be taken under advisement, and the motion of receiver for delivery of documents be granted with the reservation that the receiver may have access to the documents, but they are not to be turned over to him.

[Title of District Court and Cause.]

### ORDER

The motion of Blaine Austin, the Receiver in the above-entitled action, for the delivery of documents coming on regularly to be heard on the 29th day of November, 1957, said Receiver being represented by his attorney, W. E. Sullivan, and the plaintiffs being represented by W. E. Sullivan of the firm of Langroise & Sullivan, and the defendants being represented by Jess B. Hawley of the firm of Hawley & Hawley, and the defendant, Bank of Idaho being represented by Laurel E. Elam of the firm of Elam & Burke, and the court having heard arguments of counsel, and duly considered the same.

It Is Hereby Ordered That defendant, Wickahoney Sheep Company, shall make available for examination by said Receiver, at reasonable times and places, all of its books, records and documents as prayed for in said motion, and said Receiver shall be permitted to take off and copy from the same, or such parts thereof, as he shall deem necessary or advisable for the performance of his duties as said Receiver.

Dated: December 4, 1957.

/s/ FRED M. TAYLOR,

United States District Judge.

Form approved by Jess Hawley.

[Endorsed]: Filed December 4, 1957.

[Title of District Court and Cause.]

## STIPULATION AND ORDER FOR SALE OF PROPERTY

It Is Hereby Stipulated By and between all of the parties in the above-entitled action that the above-entitled court may authorize and direct the receiver in the above-entitled action to sell the following personal property, to wit:

Approximately 372.97 tons of alfalfa	
hay at \$14 per ton .....	\$5,221.58
Approximately 1600 bushel of oats	
at 2c per pound .....	720.00
1—1955 Chevrolet two-ton truck .....	2,000.00
1—1951 Chevrolet Pickup truck,	
Motor No. JBA753268,	
Serial No. 6 PJPF 10512 .....	500.00
Approximately 900 bales of straw	
at \$1 per bale .....	900.00
	<hr/>
Total .....	\$9,341.58

Said sale may be at private sale and the Receiver represents that this is the best price obtainable for said personal property. The whole of said purchase price shall be turned over and delivered to the First Security Bank, Boise, Idaho, to apply on the note and mortgage held by said bank on said personal property.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Plaintiffs.

HAWLEY & HAWLEY,

By /s/ JOHN T. HAWLEY.

ORDER

Pursuant to the above and foregoing Stipulation, it is so ordered.

Dated: December 16th, 1957.

/s/ FRED M. TAYLOR,  
Judge U. S. District Court.

[Endorsed]: Filed December 16, 1957.

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[Title of District Court and Cause.]

ORDER

Objections of defendants to interrogatories of plaintiffs were heard in open court on November 29, 1957, and at the conclusion thereof said matters were taken under advisement by the Court. The Court, having considered said interrogatories and the objections thereto, it is hereby ordered:

That the objection of defendant, Bank of Idaho, be and it hereby is sustained;

That the objections of defendant, Wickahoney Sheep Company, to interrogatories numbered 3, 4, 5, 6, 7, 8, 15, 16, 17, 18, 19, and 22 be and they hereby are sustained; that the objection to interrogatory numbered 14 be and it hereby is overruled.

Dated this 19th day of December 1957.

/s/ FRED M. TAYLOR,  
United States District Judge.

[Endorsed]: Filed December 19, 1957.

[Title of District Court and Cause.]

ANSWER TO PLAINTIFFS'  
INTERROGATORY No. 14

Comes Now the defendant Wickahoney Sheep Company and, in response to the interrogatories directed to defendant pursuant to Rule 33, Federal Rules of Civil Procedure, makes the following answer:

Answer to Interrogatory No. 14: Yes. \$2,000.00.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendant Wickahoney Sheep Company.

Duly verified.

Service of copy acknowledged.

[Endorsed]: Filed February 1, 1958.

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[Title of District Court and Cause.]

NOTICE OF TAKING  
DEPOSITION

To: Hawley & Hawley, of Boise, Idaho, Attorneys for Defendants, and to Elam & Burke, of Boise, Idaho, Attorneys for Defendant, Bank of Idaho:

Please Take Notice, that the above-named Plaintiffs will take the testimony on oral examination of Ciriaco Lezamiz, President of Defendant, Wickahoney Sheep Co., etc., et al.

honey Sheep Company, a corporation, before G. C. Vaughan, a Notary Public, on Monday, the 3rd day of March, 1958, at 10:00 o'clock in the forenoon of that day, and thereafter from day to day as the taking of the deposition may be adjourned, at Room 210 Federal Building, Boise, Idaho, at which time and place you are notified to appear and take such part in the examination as you may be advised, and as shall be fit and proper.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

Service of copy acknowledged.

[Endorsed]: Filed February 21, 1958.

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[Title of District Court and Cause.]

### APPEARANCE

Comes Now John T. Hawley of Hawley & Hawley, and enters the appearance of L. E. Haight, of Boise, Idaho, as additional counsel for the defendants herein.

Dated this 1st day of March, 1958.

L. E. HAIGHT,

HAWLEY & HAWLEY,

By /s/ JOHN T. HAWLEY,

Attorneys for Defendant.

Affidavit of mail attached.

[Endorsed]: Filed March 1, 1958.



[Title of District Court and Cause.]

MOTION FOR PRODUCTION, INSPECTION  
AND COPYING OF DOCUMENTS

Plaintiffs, C. A. Sewell, Orene H. Sewell and Orville R. Wilson, move this Honorable Court for an Order requiring the defendant, Bank of Idaho, to produce and to permit plaintiffs to inspect and to copy or photograph each of the following documents:

All promissory notes given by defendant, Wickahoney Sheep Company, to defendant, Bank of Idaho.

All chattel mortgages given by defendant, Wickahoney Sheep Company to defendant, Bank of Idaho.

All agreements, guarantees, and assurances given to defendant, Bank of Idaho, by defendant, Wickahoney Sheep Company, or any other person, association or corporation in connection with said above-described promissory notes.

All financial statements, balance sheets, profit and loss statements, and other documents evidencing financial condition given by defendant, Bank of Idaho, by defendant, Wickahoney Sheep Company.

The defendant, Bank of Idaho, has the possession, custody or control of each of the foregoing documents. Each of them constitutes or contains evidence relevant and material to a matter involved

in this action as is more fully shown in Exhibit A attached hereto.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR  
PRODUCTION, INSPECTION AND COPY-  
ING OF DOCUMENTS

State of Idaho,  
County of Ada—ss.

W. E. Sullivan, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiffs in the above-entitled cause, that all of the documents listed and described in the above and foregoing Motion for the Production, Inspection and Copying of Documents are in the possession, custody or control of defendant, Bank of Idaho; that each and every of said documents are competent, material and relevant to the issues in the above-entitled action.

/s/ W. E. SULLIVAN.

Subscribed and sworn to before me on this 31st day of March, 1958.

[Seal]      /s/ GLORIAN LEDVINA,  
Notary Public for Idaho.

Service of copy acknowledged.

[Endorsed]: Filed March 31, 1958.

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[Title of District Court and Cause.]

NOTICE OF HEARING ON MOTION FOR  
PRODUCTION, INSPECTION AND COPY-  
ING OF DOCUMENTS

To Hawley & Hawley, of Boise, Idaho, Attorneys  
for Defendant, Wickahoney Sheep Company,  
and to Elam & Burke, of Boise, Idaho, At-  
torneys for Defendant, Bank of Idaho:

Please Take Notice that the undersigned will  
bring on for hearing the Motion of Plaintiffs for  
the Production, Inspection and Copying of Docu-  
ments before this court in the courtroom of the  
United States District Court for the District of  
Idaho, Southern Division, in the Federal Building  
in Boise, Idaho, on Wednesday, the 2nd day of  
April, 1958, at 1:30 o'clock in the afternoon of that  
day, or as soon thereafter as counsel can be heard.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Plaintiffs.

Service of copy acknowledged.

[Endorsed]: Filed March 31, 1958.

[Title of District Court and Cause.]

NOTICE OF TAKING  
DEPOSITION

To Hawley & Hawley, of Boise, Idaho, Attorneys  
for Defendant, Wickahoney Sheep Company,  
and to Elam & Burke, of Boise, Idaho, At-  
torneys for Defendant, Bank of Idaho:

Please Take Notice that the plaintiffs, C. A. Sewell, Orene H. Sewell, and Orville R. Wilson, will take the testimony on oral examination of J. R. Simplot before Edward F. Seymour, a notary public, or another notary public qualified by law to take depositions, on Saturday, the 5th day of April, 1958, at 10:00 o'clock in the forenoon of that day, and thereafter from day to day as the taking of the deposition may be adjourned, at the courtroom of the United States District Court in the Federal Building, at Boise, Ada County, State of Idaho, at which time and place you are notified to appear and take such part in the examination as you may be advised, and as shall be fit and proper.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Plaintiffs.

Service of copy acknowledged.

[Endorsed]: Filed March 31, 1958.

[Title of District Court and Cause.]

MINUTE ENTRY—APRIL 3, 1958

Judge Taylor.

This cause came on for hearing on plaintiffs' motion for production of documents, Willis Sullivan appearing for the plaintiff, Jess B. Hawley appearing for the defendant Wickahoney Sheep Company and Laurel Elam appearing for the Bank of Idaho.

After hearing counsel they conceded items 1, 2 and 4. The Court withheld ruling on item 3 at this time and defendant was ordered to be prepared to produce item 3 at the time of trial.

It was ordered that pretrial hearing be set for 10:00 o'clock a.m., Wednesday, April 9, 1958.

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[Title of District Court and Cause.]

MINUTE ENTRY—APRIL 9, 1958

Judge Taylor.

This cause came on regularly for pretrial hearing, W. H. Langroise and Willis Sullivan appearing for the plaintiff, Jess B. Hawley and Lloyd E. Haight appearing for the defendant, and Laurel Elam appearing for the Bank of Idaho.

Upon motion of counsel for the plaintiff, the Supplemental Complaint was ordered amended by

interlineation by adding the word "wool" in line 11 in paragraph I on page 1. Thereupon, Jess Hawley, one of counsel for the defendant, moved the Court to amend the Answer to Supplemental Complaint by adding "and by established certain and general custom," at the end of paragraph I on page 1. It was so ordered.

At the conclusion of the hearing the Court ordered counsel to file a stipulation covering the matters agreed to or, if they desired to have a transcript made of the hearing, they could file a copy thereof in lieu of the stipulation.

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[Title of District Court and Cause.]

#### MINUTE ENTRY—APRIL 10, 1958

Judge Taylor.

This cause came on for trial before the Court, sitting without a jury, Wm. Langroise, Esq., and Willis Sullivan, Esq., appeared as counsel for the plaintiff, and Jess Hawley, Esq., Lloyd Haight, Esq., and Laurel Elam, Esq., appeared as counsel for the defendant.

C. A. Sewell, W. E. Sullivan, Cirao Lezamiz and Blain Austin were sworn and testified as witnesses and other evidence was introduced on the part of the plaintiff, and here the plaintiff rests.

Plaintiff having rested his case in chief comes now Jess B. Hawley, one of counsel for the de-



fendants, and moves the Court for an Order dismissing this cause of action. After hearing counsel the motion was by the Court denied.

Ciraio Lezamiz was sworn and testified as a witness on the part of the defendant.

Thereupon, court adjourned to 10:00 o'clock a.m., Friday, April 11, 1958.

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[Title of District Court and Cause.]

#### MINUTE ENTRY—APRIL 11, 1958

Judge Taylor.

This cause came on for further trial before the Court; counsel for the respective parties being present.

Jesus Baldarama, Loyd E. Haught and Harley McDowell were sworn and testified as witnesses and other evidence was introduced on the part of the defendant, and here the defendant rests.

Defendant having rested comes now the plaintiff and moves the Court for an order dismissing this cause of action. After hearing counsel the Court reserved his ruling.

And here both sides close.

Comes now the defendant and renews his motion made at the close of plaintiff's case in chief; the Court made the same ruling.

Upon agreement of counsel, it was ordered that argument be submitted on brief, the opening brief to be filed within 20 days, the answering brief to be filed within 20 days thereafter, and reply brief filed within 10 days. Thereupon, the matter was taken under advisement.

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[Title of District Court and Cause.]

STIPULATION FOR SALE  
OF PROPERTY

It Is Hereby Stipulated and Agreed by and between all of the parties in the above-entitled action that the above-entitled court may authorize and direct the Receiver in the above-entitled action to sell all property of Wickahoney Sheep Company now in his possession and remaining unsold.

And Further that the sale of said property shall be for the best price obtainable by the Receiver, and may be either at public or private sale, and in such lots or quantities as the Receiver in his discretion may determine.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Plaintiffs.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendants.

ELAM &amp; BURKE,

By /s/ LAUREL E. ELAM,  
Attorneys for Defendant  
Bank of Idaho.

## ORDER

Pursuant to the above and foregoing stipulation,

It Is Hereby Ordered That the Receiver in the above-entitled action is hereby authorized and directed to sell all of the property of Wickahoney Sheep Company now in his possession and remaining unsold.

And It Is Further Ordered that the sale of said property shall be for the best price obtainable by the Receiver, and may be either at public or private sale, and in such lots and quantities as the Receiver may in his discretion determine.

Dated: April 11th, 1958.

/s/ FRED M. TAYLOR,  
Judge, U. S. District Court.

[Endorsed]: Filed April 11, 1958.

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[Title of District Court and Cause.]

## MOTION AND ORDER

Come Now the defendants above named, and respectfully move this honorable Court for an order extending until June 9, 1958, the time within which

defendants are required to serve and file their brief herein.

ELAM & BURKE,  
HAWLEY & HAWLEY,

By /s/ JOHN T. HAWLEY,  
Attorneys for Defendants.

### ORDER

Pursuant to the within and foregoing stipulation, and good cause appearing therefor,

It Is Hereby Ordered that defendants may have to and including June 9, 1958, within which to serve and file their brief herein.

Dated this 28th day of May, 1958.

/s/ FRED M. TAYLOR,  
District Judge.

[Endorsed]: Filed May 28, 1958.

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[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties hereto that the plaintiffs may have up to and including July 2, 1958, within which to file their Reply Brief in the above-entitled action.

Dated: June 18, 1958.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Plaintiffs.

ELAM & BURKE,  
LLOYD E. HAIGHT,  
HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendants.

### ORDER

Pursuant to the above and foregoing Stipulation,

It Is Hereby Ordered that plaintiffs may have up to and including July 2, 1958, within which to file their Reply Brief in the above-entitled action.

Dated: June 19th, 1958.

/s/ FRED M. TAYLOR,  
United States District Judge.

[Endorsed]: Filed June 19, 1958.

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U. S. Treasury Department  
Internal Revenue Service

Statement of Internal Revenue Taxes Due  
As an Expense of Administration of an Estate

In the matter of: Wickahoney Sheep Co.,  
Bruneau, Idaho.

Date of this statement: Sept. 19, 1958.

Name and address of fiduciary: Blaine Austin,  
Receiver, c/o Langroise & Sullivan, McCarty Bldg.

Request is hereby made for payment of taxes  
due, under internal revenue laws of the United  
States, as stated below:

Kind of Tax and Period	Amount Assessed	Balance Due
1957 Withholding .....	695.18	695.18
Interest assessed .....	1.60	1.60
Estimated 1958 Withholding tax liability incurred to date .....	521.37	521.37
Accrued interest as of date of this state- ment .....		24.91
Amount due as of date of this statement.....		<hr/> \$1,243.06

Dollar amount per day at which interest will accrue (at 6%  
per annum) after the date of this statement: \$0.11.

The balance due on the assessments, together with  
accrued interest, is claimed as an expense of ad-  
ministration of the estate referred to above. Please  
make your remittance payable to "Internal Rev-  
enue Service" and forward to the Office of the  
District Director at the address below.

Address: P.O. Box 2618, Boise Idaho.

/s/ CLYDE A. CROOKS,  
Chief, Special Procedures Section, Office of Dis-  
trict Director of Internal Revenue.

[Endorsed]: Filed September 22, 1958.



[Title of District Court and Cause.]

## FIRST AND FINAL ACCOUNT OF RECEIVER

Blaine Austin, Receiver in the above-entitled cause, herewith renders to this Court his first and final account and report as Receiver.

The said Blaine Austin was appointed Receiver of defendant, Wickahoney Sheep Company, in the above-entitled cause, on October 9, 1957. Said Receiver thereupon took possession of all the assets of defendant, Wickahoney Sheep Company, which he could discover, and he filed his inventory with said Court on October 27, 1957.

The following persons have delivered to the Receiver purported claims against defendant, Wickahoney Sheep Company, but said claims have not been paid by the Receiver for the reason that none of said expenses were incurred by him, and all of the same were incurred by defendant, Wickahoney Sheep Company, prior to the appointment of said Receiver, to wit:

Gem State Utilities Corporation .....	\$ 22.17
Farmers Warehouse, Inc. ....	17.50
O. K. Rubber Welders .....	54.00
Utah Oil Refining Company .....	5.88
Idaho Land & Map Service .....	237.77
Ciriaco Lezamiz .....	1,173.00
Lucky Lezamiz .....	391.00
Melton Arrizabalaga .....	818.50

Ramon Arrate .....	808.50
Victor Urquidi .....	718.96
Julian Mendilibar .....	818.50
Clarence Sparleder .....	425.22
Jose Louis Lezamiz .....	765.82
U. S. Dept. of Internal Revenue .....	695.18

(Withholding taxes)

That the Receiver has sold all of said assets of said Wickahoney Sheep Company to the following persons, for the following amounts, and is chargeable as follows:

Date	Purchaser	Property	Amount
11/ 3/57	E. C. Warren	441 Ewes	\$ 5,733.00
11/ 3/57	Golden Moffett	110 Lambs	1,390.50
11/ 9/57	Harry Heath & Son	285 Ewes	2,663.67
11/26/57	Ciriaco Lezamiz	64 Ewes	640.00
11/26/57	Ciriaco Lezamiz	18 Bucks	54.00
4/11/58	Ciriaco Lezamiz	1 Cow	
		1 Yearling	200.00
4/12/58	Bruneau Sheep Co.	Misc. equipment	9,000.00
12/24/57	Barlow & Loveland	Misc. property	9,341.58
11/26/57	Barlow & Loveland	2334 Ewes	
		16 Bucks	
		41 Wethers	49,842.00
7/15/58	Barlow & Loveland	Water tank, pump and troughs	500.00
4/15/58	First Security Bank	Refund on Harris contract	4.24
			<hr/> \$79,368.99

Said Receiver is entitled to claims for disbursements as follows:

Ck. #	Date	Payable	For	Amount
1	12/ 6/57	J. W. Perry Agency	Bond	\$ 50.00
2	12/ 9/57	Ramon Arrate	Labor	337.25
3	12/ 9/57	Milton Arrizbaloza	Labor	337.25
4	12/ 9/57	Julian Mendalabir	Labor	337.25
5	12/ 9/57	Victor Urguidi	Labor	337.25
6	12/ 9/57	Jose Lezameiz	Labor	337.25
7	12/ 9/57	Clarence Eparleder	Labor	337.25
8	12/ 9/57	Lube Lezameiz	Labor	157.75
9	12/ 9/57	Ceriacio Lezameiz	Labor	450.00
10	12/13/57	Montgomery-Blunk Co.	Supplies	344.22
11	12/13/57	Gem State Truck Lines	Hauling	494.21
12	12/13/57	Blaine Austin & Co.	Labor and Hay	112.34
13	4/12/58	First Security Bank	Mortgage on equipment	6,148.67
14	4/12/58	First Security Bank	Harris Conditional Sale Contract on equipment	1,308.56
15	4/16/58	Blaine Austin	On account	1,000.00
16	4/18/58	Grassmere Station	Gas	10.50
17	7/28/58	Wells, Baxter & Miller	Acct. services	60.00
18	7/29/58	Farmers Ware. Inc.	Supplies	28.00
19	7/29/58	Patterson Livestock Supply Co.	Medicine	5.85
20	7/29/58	Gem State Utilities Corp. (Tel.)	Telephone	30.53
21	7/29/58	Boise Payette Lmbr.	Supplies	24.82
22	7/29/58	Aero Chevrolet Co.	Repairs	11.24
23	7/29/58	Bill's Blacksmith Shop	Repairs	4.35
24	7/29/58	Bruneau Imple. Gar.	Repairs	27.00
25	7/29/58	Swedes Blacksmith	Repairs	11.00
26	7/29/58	Larry Barnes Chev.	Repairs	128.14
27	7/29/58	Goodman Oil Co.	Stove Oil	96.16
28	7/29/58	Utah Oil Refining Co.	Gas	292.63
29	10/ 3/58	Internal Revenue Ser.	Withholding tax	121.10
1	8/18/58	Harry Golden	Labor	35.00
	12/24/57	First Security Bank	Mortgage payment	9,341.58
				<hr/> \$22,317.15

## Recapitulation:

Receipts .....	\$79,368.99
Disbursements .....	22,317.15
	<hr/>
Balance on hand .....	\$57,051.84

That your Receiver has necessarily incurred the following expenses in the administration of said receivership:

Airplane trans. ....	\$ 137.70
Car expense .....	828.90
Room .....	233.00
Meals .....	269.35
Telephone .....	75.00
Miscellaneous .....	19.25
	<hr/>
	\$1,563.20

That your Receiver requests that he be allowed the payment of said expenses, on which he has already received a credit of \$1,000.00. Your Receiver also requests that he be allowed as reasonable compensation for his services as said Receiver the sum of \$4,000.00.

Wherefore, your Receiver prays that his account by approved, allowed and settled; that he be instructed to pay to himself the sum of \$563.20 as the balance of his expenses, and that he be allowed the sum of \$4,000.00 as reasonable compensation for his services; that he be instructed to pay over and deliver to the Clerk of the above-entitled Court the balance of funds then remaining, being the sum

of \$52,488.64, and that thereupon he be discharged as such Receiver.

/s/ BLAINE AUSTIN,  
Receiver.

Duly verified.

Service of copy acknowledged.

[Endorsed]: Filed October 3, 1958.

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[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated and Agreed by and between all of the parties in the above-entitled action, through their respective attorneys, as follows:

That the First and Final Account of Blaine Austin, Receiver of defendant Wickahoney Sheep Company, appointed in the above-entitled cause, which was rendered and filed in the above-entitled Court on October 3, 1958, is true and correct, and should be settled, allowed and approved; provided, however, that there is no agreement that the purported claims of creditors of Wickahoney Sheep Company which were delivered to said Receiver, but not paid by him, are correct.

That the balance of the funds of said receivership now in the hands of the Receiver is the sum of \$57,051.84; that the personal expenses of said Receiver amounting to the sum of \$1,563.20 are

correct, and should be allowed and paid to him; that he has already received a payment on account of said expenses of \$1,000.00, and the balance of said expenses unpaid is the sum of \$563.20; that the allowance of reasonable compensation to the Receiver for his services as such Receiver shall be left to the discretion of the Court.

After the payment to the Receiver of the balance of his expenses and his compensation for services as allowed by the Court, that the Receiver shall pay over and deliver to the Clerk of the above-entitled Court the balance of funds then remaining, and that thereupon he be discharged as such Receiver.

That there is due and owing from the United States Agricultural Stabilization & Conservation Agency, of Mountain Home, Idaho, as a lamb subsidy for the year 1957 the sum of \$1,166.40; that this sum should be paid directly to the Clerk of the above-entitled Court, and added to and become a part of the receivership funds so paid to said Clerk.

Dated: October 7, 1958.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

HAWLEY & HAWLEY,

By /s/ JOHN T. HAWLEY,

Attorneys for Defendants.



ELAM & BURKE,

By /s/ CLAUDE BURKE,  
Attorneys for Defendant,  
Bank of Idaho.

[Endorsed]: Filed October 9, 1958.

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[Title of District Court and Cause.]

ORDER APPROVING FIRST AND FINAL  
ACCOUNT OF RECEIVER AND DIS-  
CHARGING RECEIVER

Pursuant to the Stipulation of all the parties  
hereto filed in the above-entitled action,

It Is Hereby Ordered that the First and Final  
Account of the Receiver of defendant Wickahoney  
Sheep Company, appointed in the above-entitled  
action, filed in this Court on October 3, 1958, is  
hereby settled, allowed and approved; that the bal-  
ance of the funds of said receivership now in the  
hands of the Receiver is the sum of \$57,051.84; that  
the personal expenses of the Receiver amounting  
to the sum of \$1,563.20 are hereby allowed and ap-  
proved; that said Receiver has received on account  
of said expenses the sum of \$1,000.00, and he is  
hereby authorized to pay to himself out of the  
funds now in his hands the balance of said ex-  
penses, being the sum of \$563.20; that there is  
hereby allowed to said Receiver as reasonable com-  
pensation for his services as such Receiver the sum

of \$3,000.00, which he is authorized to pay to himself out of the funds in his hands; that the balance of the funds of said receivership then remaining in his hands, being the sum of \$53,488.64, shall be paid over and delivered to the Clerk of this Court, and subject to further order of this Court, and thereupon said Receiver shall be and is hereby discharged as such Receiver.

And, It Is Further Ordered that the sum of \$1,166.40 due and owing from the United States Agricultural Stabilization & Conservation Agency, of Mountain Home, Idaho, as lamb subsidy for the year 1957 for defendant Wickahoney Sheep Company shall be paid directly to the Clerk of the above-entitled Court, and added to and become a part of the receivership funds so paid to said Clerk.

Dated: October 9th, 1958.

/s/ FRED M. TAYLOR,  
United States District Judge.

[Endorsed]: Filed October 9, 1958.

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[Title of District Court and Cause.]

MINUTE ENTRY—OCTOBER 31, 1958

Fred M. Taylor, Judge.

This cause came on for further trial before the Court, sitting without a jury, Willis Sullivan appearing for the plaintiffs; Jess B. Hawley appear-

ing for the defendant, Wickahoney Sheep Co., and Laurel Elam for the Bank of Idaho.

At this time the Court announced his decision as follows: Judgment for the plaintiff and against the defendant, Wickahoney Sheep Co., in the amount of \$149,452.68; Judgment for the plaintiff and against the defendant, Bank of Idaho, for \$86,082.50, any monies received from the Bank to be applied on the judgment against Wickahoney Sheep Co.

It was ordered that the money now on deposit in the registry of this Court, in the amount of \$54,655.04, be applied on said judgment against the Wickahoney Sheep Co.

The Court found for the plaintiffs and against the defendants on defendants' counterclaim.

It was further ordered that counsel for plaintiffs prepare Findings, Conclusions and Judgment, in conformity with the Court's oral opinion, and present same to the Court for approval.

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[Title of District Court and Cause.]

## OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

Come Now the defendants and object to the proposed findings of fact submitted by the plaintiffs upon the following grounds and for the following reasons:

## I.

Object to the recital preceding the findings of fact, as shown on page 1 of said proposed findings, for the reason that Hawley & Hawley appear of record as attorneys for defendant Wickahoney Sheep Company, Elam & Burke appear of record as attorneys for defendant Bank of Idaho, and Lloyd E. Haight does not appear of record as attorney for either of the defendant parties.

## II.

Object to Finding No. III in that the evidence fails to establish that all of said personal property was on or about October 15, 1955, examined and accepted by defendant Wickahoney Sheep Company.

## III.

Object to that portion of Finding No. VI which states the plaintiffs "duly, regularly and properly gave notice in writing of the above-mentioned defaults" in that the evidence wholly fails to establish such finding. The evidence discloses without contradiction that an escrow agreement was signed by all parties under which the contracts and documents were escrowed with the defendant Bank of Idaho, which specifically provided that all notices of defaults and declarations of forfeiture be delivered to said bank and by it sent by registered mail to defendant Wickahoney Sheep Company. Said escrow agreement further provided that its provisions should govern in the event of conflict with the agreement of purchase and sale between the parties. Defendants therefore request an affir-

mative finding that the plaintiffs did not duly, regularly and properly give notice of default or declare a forfeiture in accordance with the terms of the agreement between the parties.

#### IV.

Object to that portion of Finding No. VII which finds that the defendant Wickahoney Sheep Company wrongfully and unlawfully failed, refused and neglected to turn over and deliver possession of said personal property, and wrongfully and unlawfully detained and withheld said property from plaintiffs' possession, in that the evidence wholly fails to establish that a legally effective and proper notice of default and declaration of forfeiture were ever given to defendants.

#### V.

Object to that portion of Finding No. VIII which states that upon forfeiture the plaintiffs "were entitled to the immediate possession of all said personal property \* \* \* and of lambs and increase of the sheep" in that the evidence wholly fails to sustain this finding.

#### VI.

Object to that portion of Finding No. 10 to the effect that defendant Bank of Idaho wrongfully and unlawfully failed, neglected and refused to turn over and deliver to plaintiffs copies of said purchase agreement and bill of sale in that the evidence wholly fails to support this finding, and the uncontradicted evidence affirmatively establishes that no legal forfeiture, in connection with the



terms of the escrow agreement entered into between the parties and which governed and controlled the action and activities of the Bank of Idaho, was ever given.

#### VII.

Object to that portion of Finding No. 11, which states the defendant Wickahoney Sheep Company wrongfully and unlawfully sold sheep and lambs belonging to the plaintiffs, in that the uncontradicted evidence establishes that the purchase and sale agreement between the parties was not in default and no effective forfeiture had been declared, said defendant Wickahoney Sheep Company therefore having a legal right to sell and dispose of sheep and lambs.

#### VIII.

Object to that portion of Finding No. 15 on page 6 which states that the defendant Bank of Idaho had actual knowledge of plaintiffs' ownership and title of the personal property sold, including all lambs and increase born of plaintiffs' sheep, in that this finding is not supported by the evidence, the evidence affirmatively showing that defendant Wickahoney Sheep Company had ownership and title to all lambs and increase from the sheep, the subject matter of the contract;

Further object to that portion of said Finding No. 15 which declares that the chattel mortgages of the Bank of Idaho were inferior and subordinate to plaintiffs' ownership of and title to sheep and lambs and increase thereof, since the evidence



affirmatively shows the right to the sale of the same was in the defendant Wickahoney Sheep Company.

IX.

Object to Finding No. 16 on page 7 in that the evidence wholly fails to support and sustain said finding.

X.

Defendants request and demand an express finding permitting and allowing defendants a credit against the purchase price of \$86,082.50, received by defendant Wickahoney Sheep Company and transmitted to defendant Bank of Idaho, for the necessary and proper expenses incurred by defendant Wickahoney Sheep Company in caring for and operating the sheep being the subject matter of the contract, as disclosed by plaintiffs' Exhibit 2 and defendants' Exhibit 27 and the testimony relative thereto.

XI.

Defendants further object to the conclusions of law, the same being dependent upon erroneous findings as aforesaid.

HAWLEY & HAWLEY,  
Attorneys for Defendant Wickahoney Sheep Company;

ELAM & BURKE,  
Attorneys for Defendant  
Bank of Idaho;

By /s/ JESS B. HAWLEY, JR.

Affidavit of mail attached.

[Endorsed]: Filed December 15, 1958.

[Title of District Court and Cause.]

MINUTE ENTRY—DECEMBER 18, 1958

Judge Taylor.

This matter came on for hearing on defendants objections to findings of fact and conclusions of law; Jess B. Hawley, Jr., and Laurel E. Elam appeared as counsel for defendants, and Willis Sullivan appeared for plaintiffs.

After hearing counsel, it was ordered that objection No. 1 be sustained and objections Nos. 2 to 11, inclusive, be overruled.

The findings of fact and conclusions of law, and judgment, were signed by the Court and ordered filed.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled action came on for trial before the court sitting without a jury, on April 10, 1958, in the courtroom of the above-entitled court at Boise, Idaho, the plaintiffs appearing by their attorneys, Langroise & Sullivan, of Boise, Idaho, and the defendants appearing by their attorneys, Hawley & Hawley, of Boise, Idaho, and Elam & Burke, of Boise, Idaho, attorneys for defendant Bank of Idaho, and testimony, both oral and docu-

mentary, having been offered and briefs filed by both parties, and the court being fully advised in the premises, now makes and finds its

## Findings of Fact

### I.

That the plaintiffs, C. A. Sewell and Orene H. Sewell, are now, and at all times hereinafter mentioned have been, husband and wife. Each and all of the plaintiffs are citizens of the State of Nevada. Defendant, Wickahoney Sheep Company, is a corporation, incorporated under the laws of the state of Idaho. Defendant, Bank of Idaho (formerly Continental State Bank), is a corporation, incorporated under the laws of the State of Idaho. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00.

### II.

That on or about the 15th day of December, 1955, plaintiffs, C. A. Sewell and Orene H. Sewell, as sellers, entered into a written Purchase Agreement dated December 15, 1955, with defendant Wickahoney Sheep Company, as purchaser, whereby said sellers promised and agreed to sell to purchaser and purchaser promised and agreed to purchase from sellers all that certain personal property listed and described in Exhibit B attached to said Purchase Agreement for the total purchase price of \$121,700.00, on the terms and conditions set forth in said Purchase Agreement. That a copy of said

Purchase Agreement is attached to plaintiffs' complaint on file in this action, marked Exhibit A, and by reference made a part hereof as though set forth at length herein.

### III.

That plaintiffs, C. A. Sewell and Orene H. Sewell, turned over and delivered to defendant Wickahoney Sheep Company all of said personal property being sold under said Purchase Agreement on or about October 15, 1955, and all of said personal property was at that time examined and accepted by defendant Wickahoney Sheep Company. That title to and ownership of all said personal property remained in plaintiffs until defendant Wickahoney Sheep Company had fully performed said Purchase Agreement and paid to plaintiffs the full purchase price therefor.

### IV.

That said plaintiffs, C. A. Sewell and Orene H. Sewell, have duly and regularly assigned said Purchase Agreement to plaintiff, Orville R. Wilson.

### V.

That defendant Wickahoney Sheep Company failed and refused to perform Purchase Agreement and was in default in the performance thereof in the following respects:

a. Defendant Wickahoney Sheep Company wholly failed and refused to make said payment of \$15,000.00 due and payable under the terms of said

Purchase Agreement on October 15, 1956, or any part thereof.

b. Defendant Wickahoney Sheep Company depleted the 4,005 ewes and 82 bucks, which were a part of plaintiffs' personal property being sold to the Wickahoney Sheep Company under said Purchase Agreement, to the total number of 3,187 ewes and 44 bucks.

## VI.

That plaintiffs duly, regularly and properly gave notice in writing of the above-mentioned defaults as provided in said Purchase Agreement, which said notice of default was received by defendant Wickahoney Sheep Company on January 17, 1957, and was received by defendant Bank of Idaho on January 16, 1957. That during the period of ninety days after defendant Wickahoney Sheep Company received said written notice of default, as provided in said Purchase Agreement, defendant Wickahoney Sheep Company wholly failed and refused to remedy said defaults, or any of them, and defendant Wickahoney Sheep Company has never paid to plaintiffs any part of said purchase price except the first payment of \$15,000.00, paid upon the execution of said Purchase Agreement.

## VII.

That after the expiration of said ninety-day period following the receipt of said notice of default by defendant Wickahoney Sheep Company, the plaintiffs declared a forfeiture of said Purchase



Agreement and made demand upon said defendant Wickahoney Sheep Company, for delivery to them of all of said personal property being sold to Wickahoney Sheep Company under said Purchase Agreement including all lambs and increase born of said sheep being sold under said Purchase Agreement then in the possession of said defendant Wickahoney Sheep Company, but defendant Wickahoney Sheep Company wrongfully and unlawfully failed, refused and neglected to turn over and deliver possession of said personal property or any part thereof, to plaintiffs, and said defendant Wickahoney Sheep Company, without plaintiffs' consent, wrongfully and unlawfully detained and withheld all of said plaintiffs' personal property from possession of plaintiffs.

### VIII.

That none of said personal property, nor any part thereof, was taken for a tax assessment or a fine, pursuant to statute, or seized under an execution or attachment against the property of plaintiffs, or any of them, and plaintiffs, upon the forfeiture of said Purchase Agreement, were entitled to the immediate possession of all of the said personal property listed in said Purchase Agreement and Exhibit B attached thereto, and of lambs and increase of the sheep being sold under said Purchase Agreement and in possession of defendant Wickahoney Sheep Company at the time of forfeiture of Purchase Agreement.



## XI.

That prior to the commencement of this action the plaintiffs had duly performed all of the conditions precedent of said Purchase Agreement on their part to be performed.

## X.

That under the terms and provisions of said Purchase Agreement an executed copy thereof and Bills of Sale to said personal property were deposited in escrow with defendant Bank of Idaho at Boise, Idaho, as escrow holder. That after plaintiffs declared a forfeiture of said Purchase Agreement they made demand upon defendant Bank of Idaho to turn over and deliver to plaintiffs said executed copies of said Purchase Agreement and Bills of Sale; that defendant Bank of Idaho wrongfully and unlawfully failed, neglected and refused to turn over and deliver to plaintiff said executed copies of said Purchase Agreement and Bills of Sale. That after the commencement of this action defendant Bank of Idaho deposited with the Clerk of the Court said executed copies of said Purchase Agreement and Bills of Sale.

## XI.

That after the forfeiture of said Purchase Agreement and after the commencement of this action and the service of summons and complaint herein on defendants Wickahoney Sheep Company and Bank of Idaho, and between July 2, 1957, and August 5, 1957, inclusive, defendant Wickahoney

Sheep Company wrongfully and unlawfully sold sheep and lambs belonging to plaintiffs for the total purchase price of \$86,082.50, without the knowledge or consent of plaintiffs. That the fair and reasonable market value of said lambs and sheep belonging to plaintiffs and so wrongfully and unlawfully sold by defendant Wickahoney, at the time of the forfeiture of said Purchase Agreement was the sum of \$86,082.50.

## XII.

That on or about October 9, 1957, defendant Wickahoney Sheep Company turned over and delivered to the receiver appointed in this action all of the property of plaintiffs being sold to defendant Wickahoney Sheep Company under said Purchase Agreement, then remaining in the possession of said Wickahoney Sheep Company. Thereafter all of said personal property of plaintiffs received by said receiver was sold by said receiver for the sum of \$62,370.18; that the fair and reasonable market value of plaintiffs' property turned over and delivered to the receiver by defendant Wickahoney Sheep Company was, at the time of the forfeiture of said Purchase Agreement, the sum of \$62,370.18.

## XIII.

That defendant Wickahoney Sheep Company failed and refused to turn over to said receiver one 1954 International 11½ ton truck, or to account therefor; that the fair and reasonable market value

of said truck at the time of the forfeiture of said Purchase Agreement was the sum of \$1,000.

#### XIV.

That the final account of said receiver has been approved by this Court and said receiver has been discharged; that said receiver has turned over and delivered to the clerk of this court all monies remaining in his hands after paying all of the costs and expenses of said receivership, being the sum of \$54,655.04, which sum is now held by the clerk of this court.

#### XV.

That defendant Bank of Idaho (formerly Continental State Bank) had at all times actual knowledge and notice of said Purchase Agreement and of plaintiffs' ownership of and title to all of said personal property being sold by plaintiffs to defendant Wickahoney Sheep Company under said Purchase Agreement, including all lambs and increase born of plaintiffs' sheep. That without the knowledge and consent of plaintiffs defendant Bank of Idaho received and accepted from defendant Wickahoney Sheep Company chattel mortgages upon the sheep and lambs and increase thereof owned by plaintiffs, which chattel mortgages and the sums of money secured thereby are as follows:

Date of Mortgage	Amount
9/17/56 .....	\$ 50,000
11/ 1/56 .....	50,000
11/27/56 .....	65,000
1/ 5/57 .....	100,000

That each and every one of said chattel mortgages above described is inferior and subordinate to plaintiffs' ownership of and title to said sheep and the lambs and increase thereof, and is subject to all the terms and conditions of said Purchase Agreement. That releases and satisfactions of said chattel mortgages have been deposited with the clerk of this Court.

#### XVI.

That defendant Bank of Idaho at all times had notice and knowledge that the lambs and sheep sold by defendant Wickahoney Sheep Company between the dates of July 2, 1957, and August 5, 1957, as hereinabove mentioned, were the property of plaintiffs, and that plaintiffs were entitled to the possession thereof. That defendant Wickahoney Sheep Company paid over and delivered to defendant Bank of Idaho out of the proceeds received from the sale of plaintiffs' sheep and the increase and lambs born of said sheep the sum of \$86,082.50, all of which was well known by defendant Bank of Idaho; that the defendant Bank of Idaho thereby wrongfully and unlawfully converted to its own uses monies and funds of plaintiffs, and to which plaintiffs were entitled, in the amount of \$86,082.50.

#### XVII.

That none of said plaintiffs at any time made any false or fraudulent representations to defendant Wickahoney Sheep Company, or any of its officers, agents or employees concerning said Purchase Agreement or any of the personal property being

sold to defendant Wickahoney Sheep Company under the terms thereof.

### Conclusions of Law

From the foregoing facts the Court concludes:

#### I.

That this court has jurisdiction over this action on the grounds of diversity of citizenship of the parties hereto under the provisions of 28 U.S.C. Section 1332.

#### II.

That on or about October 15, 1955, Plaintiffs C. A. Sewell and Oren H. Sewell turned over and delivered to Defendant Wickahoney Sheep Company all of said personal property being sold under Purchase Agreement, and all of said personal property was at that time examined and accepted by Defendant Wickahoney Sheep Company.

#### III.

That title to and ownership of all of the personal property being sold to Defendant Wickahoney Sheep Company under said Purchase Agreement remained in Plaintiffs until Defendant Wickahoney Sheep Company had fully performed said Purchase Agreement and paid to Plaintiffs the full purchase price therefor. That title to and ownership of all lambs and increase born of Plaintiffs' sheep being sold under said Purchase Agreement was in Plaintiffs subject to the terms and conditions of said Purchase Agreement.



## IV.

That Defendant Wickahoney Sheep Company failed and refused to perform said Purchase Agreement and was in default of the performance thereof prior to January 16, 1957.

## V.

That Plaintiffs duly, regularly and properly gave notice in writing of the defaults of Defendant Wickahoney Sheep Company for failure to perform said Purchase Agreement, which said notice of default was received by Defendant Wickahoney Sheep Company on January 17, 1957, and was received by Defendant Bank of Idaho on January 16, 1957.

## VI.

That Defendant Wickahoney Sheep Company wholly failed and refused to remedy said defaults, or any of them, within ninety days after it received written notice of default, and thereupon Plaintiffs declared a forfeiture of said Purchase Agreement and made demand upon Defendant Wickahoney Sheep Company for delivery to them of all of said personal property being sold to Wickahoney Sheep Company under said Purchase Agreement, including all lambs and increase born of said sheep being sold under said Purchase Agreement then in the possession of Defendant Wickahoney Sheep Company, but Defendant Wickahoney Sheep Company wrongfully and unlawfully failed, refused and neglected to turn over and deliver possession of said personal property, and any part thereof



to Plaintiffs, and said Defendant Wickahoney Sheep Company, without Plaintiffs' consent, wrongfully and unlawfully detained and withheld all of said Plaintiffs' personal property from possession of Plaintiffs.

#### VII.

That upon the forfeiture of said Purchase Agreement Plaintiffs had title to and ownership of and were entitled to immediate possession of all of said personal property being sold to Defendant Wickahoney Sheep Company under said Purchase Agreement, including all lambs and increase born of said Plaintiffs' sheep and then in the possession of said Wickahoney Sheep Company.

#### VIII.

That prior to the commencement of this action the Plaintiffs had duly performed all of the conditions precedent of said Purchase Agreement on their part to be performed.

#### IX.

That delivery of said personal property cannot be had, and therefore Plaintiffs are entitled to judgment against Defendant Wickahoney Sheep Company for the value thereof at the time of the forfeiture of said Purchase Agreement. That the fair and reasonable market value of Plaintiffs' personal property at the time of the forfeiture of said Purchase Agreement is the sum of \$149,452.68, and Plaintiffs are entitled to judgment against Defendant Wickahoney Sheep Company in that amount.

## X.

That Plaintiffs are entitled to have turned over and delivered to them the executed copy of said Purchase Agreement and the Bills of Sale to said personal property formerly in escrow with the Defendant Bank of Idaho as escrow holder and now in the possession of the clerk of this court.

## XI.

That all chattel mortgages held by Defendant Bank of Idaho on Plaintiffs' personal property including the lambs and increase of Plaintiffs' sheep being sold under said Purchase Agreement were inferior and subordinate to Plaintiffs' ownership of and title thereto, and subject to all the terms and conditions of said Purchase Agreement. That Defendant Bank of Idaho was not an innocent, bona fide holder of any said chattel mortgages as against said Plaintiffs.

## XII.

That after the forfeiture of said Purchase Agreement Defendant Wickahoney Sheep Company wrongfully and unlawfully, and without consent of Plaintiffs, sold sheep and lambs belonging to Plaintiffs for the total purchase price of \$86,082.50, to which monies and funds Plaintiffs were rightfully and lawfully entitled.

## XIII.

That Defendant Wickahoney Sheep Company paid over and delivered to Defendant Bank of Idaho

the said sum of \$86,082.50, being the proceeds from the wrongful and unlawful sale of Plaintiffs' sheep and the increase and lambs born of said sheep, after forfeiture of said Purchase Agreement, all of which was well known by Defendant Bank of Idaho, and Defendant Bank of Idaho received and accepted said funds and monies of the Plaintiffs and thereby wrongfully and unlawfully converted to its own use said monies and funds of Plaintiffs, and Plaintiffs are entitled to judgment against said Defendant Bank of Idaho for the recovery thereof, amounting to the said sum of \$86,082.50. That all monies paid by Defendant Bank of Idaho to Plaintiffs in satisfaction of said judgment shall be applied upon and partially satisfy pro tanto the judgment in favor of Plaintiffs against Defendant Wickahoney Sheep Company.

#### XIV.

That Plaintiffs are entitled to have turned over and delivered to them all releases and satisfactions of all chattel mortgages on their personal property now in the possession of the clerk of this court.

#### XV.

That the Plaintiffs are entitled to have turned over and delivered to them by the clerk of this court the sum of \$54,655.04 now in the possession of said clerk, being the balance remaining from the liquidation of Plaintiffs' property by the receiver in this action, said sum to be applied in partial payment and partial satisfaction of the

judgment against Defendant Wickahoney Sheep Company only in this action.

XVI.

Let judgment be entered accordingly.

Dated this 18th day of December, 1958.

/s/ FRED M. TAYLOR,  
U. S. District Judge.

Service of copy acknowledged.

Lodged December 8, 1958.

[Endorsed]: Filed December 18, 1958.

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In the District Court of the United States for the  
District of Idaho, Southern Division

No. 3339

C. A. SEWELL, ORENE H. SEWELL,  
and ORVILLE R. WILSON,

Plaintiffs,

vs.

WICKAHONEY SHEEP COMPANY, an  
Idaho corporation, and BANK OF IDAHO  
(formerly Continental State Bank), an  
Idaho corporation,

Defendants.

JUDGMENT

The above entitled action came on for trial before the court sitting without a jury, on April 10, 1958,

in the courtroom of the above entitled court at Boise, Idaho, the Plaintiffs appearing by their attorneys, Langroise & Sullivan, of Boise, Idaho, and the Defendants appearing by their attorneys, Hawley & Hawley, of Boise, Idaho, and Elam & Burke, of Boise, Idaho, attorneys for Defendant Bank of Idaho, and testimony, both oral and documentary, having been offered and briefs filed by both parties, and the Court being fully advised in the premises, and having made, entered and filed its findings of fact and conclusions of law,

It Is Hereby Ordered, adjudged and decreed that the Plaintiffs have judgment against the Defendants as follows:

1. That Plaintiffs have judgment against Defendant Wickahoney Sheep Company in the sum of \$149,452.68.

2. That Plaintiffs have judgment against Defendant Bank of Idaho in the sum of \$86,082.50; that all monies paid by Defendant Bank of Idaho to Plaintiffs on said judgment against it shall be applied upon and be in partial satisfaction, pro tanto, of said judgment against Defendant Wickahoney Sheep Company.

3. That the clerk of this court shall immediately pay over and deliver to Plaintiffs the sum of \$54,655.04, now in his hands, to be applied in partial satisfaction of said judgment against Defendant Wickahoney Sheep Company only.

4. That the clerk of this court shall immediately



turn over and deliver to Plaintiffs the executed copies of the Purchase Agreement and the Bills of Sale now in his possession which were formerly in escrow with Defendant Bank of Idaho.

5. That the clerk of this court shall immediately turn over and deliver to Plaintiffs all releases and satisfactions of chattel mortgages now in his possession, and given by Defendant Bank of Idaho to release and satisfy all chattel mortgages on Plaintiffs' property.

6. That Plaintiffs have judgment against both Defendants, jointly and severally, for their costs and disbursements incurred and expended in this action, to be hereinafter fixed, on notice, and hereinafter inserted by the clerk of this court in the sum of \$39.00.

7. That this judgment, and all sums due and payable to Plaintiffs by Defendants hereunder shall bear interest at the rate of six per cent per annum from the date hereof until paid.

Dated this 18th day of December, 1958.

/s/ FRED M. TAYLOR,  
U. S. District Judge.

Service of copy acknowledged.

Lodged December 8, 1958.

[Endorsed]: Filed December 18, 1958.



## RECEIPT

Received of Ed M. Bryan, Clerk U. S. District Court, the following:

Purchase Agreement dated December 15, 1955.

Bill of Sale dated October 17, 1955.

Chattel Mortgage (Plaintiff's Exhibit No. 21)  
(cancelled).

Chattel Mortgage (Plaintiff's Exhibit No. 3)  
(cancelled).

Chattel Mortgage (Plaintiff's Exhibit No. 4)  
(cancelled).

Chattel Mortgage (Plaintiff's Exhibit No. 5)  
(cancelled).

Check No. 2573, payable to C. A. Sewell, Orene H. Sewell, and Orville R. Wilson, in the amount of \$54,655.04.

/s/ W. H. LANGROISE.

[Endorsed]: Filed December 22, 1958.

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[Title of District Court and Cause.]

## BILL OF COSTS

Attorneys' Docket Fee.....	\$20.00
Filing Fee .....	15.00
U. S. Marshall-Service of Summons....	4.00
	<hr/>
Total .....	39.00

Costs taxed this 29th day of January, 1958, in the amount of \$39.00.

/s/ ED M. BRYAN,  
Clerk.

Duly verified.

Service of copy acknowledged.

[Endorsed]: Filed December 22, 1958.

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[Title of District Court and Cause.]

#### NOTICE OF TAXATION OF COSTS

To Hawley & Hawley, Boise, Idaho, attorneys for Defendants, and to Elam & Burke, attorneys for Defendant Bank of Idaho:

Please Take Notice, That the Bill of Costs, a copy of which is hereto attached, will be presented to the clerk of the above court for taxation at his office in the Federal Building, Boise, Idaho, on Monday, December 29, 1958, at 2:00 o'clock in the afternoon of that day.

Dated: December 22, 1958.

LANGROISE & SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Plaintiffs.

Service of copy acknowledged.

[Endorsed]: Filed December 22, 1958.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given That the Bank of Idaho (formerly Continental State Bank), an Idaho corporation, and one of the Defendants above named, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from that final judgment made and entered in this action on the 18th day of December, 1958.

Dated this 12th day of January, 1959.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,

ELAM AND BURKE,

By /s/ LAUREL E. ELAM,

Attorneys for Defendant  
Bank of Idaho.

Service of copy acknowledged.

[Endorsed]: Filed January 12, 1959.

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[Title of District Court and Cause.]

### STIPULATION

Come Now the Plaintiffs herein, and Bank of Idaho (formerly Continental State Bank), one of the Defendants, by and through their respective counsel of record, and hereby stipulate that the amount of the supersedeas bond to be filed by said

Defendant with its notice of appeal shall be fixed in the total amount of \$95,000.00, the same to be conditioned for the satisfaction of the judgment made and entered December 18, 1958, against the above-named Defendant, together with costs, interest thereon, and damages for delay.

It Is Further Stipulated that any and all proceedings to enforce said judgment as aforesaid against Defendant Bank of Idaho be stayed pending the determination of Defendant's appeal.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendant  
Bank of Idaho.

ELAM AND BURKE,

By /s/ LAUREL E. ELAM,  
Attorneys for Defendant  
Bank of Idaho.

W. H. LANGROISE,  
W. E. SULLIVAN,

By /s/ W. H. LANGROISE,  
Attorneys for Plaintiffs.

### ORDER

Pursuant to the above and foregoing stipulation, and good cause appearing therefor,

It Is Hereby Ordered that the supersedeas bond to be filed by the Bank of Idaho, one of the De-

fendants above named, with its notice of appeal, be fixed in the amount of \$95,000.00, and that upon the filing of the appropriate notice of appeal and of the bond as aforesaid any proceedings to enforce that certain judgment entered in the above-entitled case against Defendant Bank of Idaho on December 18, 1958, be stayed pending the determination of the Defendant's appeal from such judgment.

Dated this 12th day of January, 1959.

/s/ FRED M. TAYLOR,  
District Judge.

[Endorsed]: Filed January 12, 1959.

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[Title of District Court and Cause.]

### SUPERSEDEAS BOND

Know All Men By These Presents: That we, Bank of Idaho, formerly Continental State Bank, an Idaho corporation, and one of the above-named Defendants, as principal, and United Pacific Insurance Company, a corporation organized and existing under the laws of the State of Washington, and duly authorized to transact a surety business in the State of Idaho, as surety, are firmly held and bound unto C. A. Sewell, Orene H. Sewell, and Orville R. Wilson, the Plaintiffs above named, in the full and just sum of Ninety-five Thousand and no/100 (\$95,000.00) Dollars, to be paid to the

said Plaintiffs above named, their successors, executors, administrators and assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Whereas, on December 18, 1958, in the above-entitled action, a judgment was rendered, made and entered against Bank of Idaho, one of the Defendants above named, in the amount of \$86,082.50, together with costs fixed at \$39.00, and the said Defendant Bank of Idaho, an Idaho corporation, having filed a notice of appeal to reverse the judgment in the aforesaid suit to the United States Court of Appeals for the Ninth Circuit; now the condition of this obligation is such that if the said Bank of Idaho, an Idaho corporation, and one of the Defendants, shall prosecute its appeal to effect and shall satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and shall satisfy in full such modification of the judgment and such costs, interest and damages as the said Court of Appeals may adjudge and award, then this obligation to be **void**; otherwise to be and remain in full force and effect.

The said surety herein hereby irrevocably appoints the clerk of this court as its agent upon whom any papers affecting its liability on this undertaking may be served.



Signed, sealed and delivered this 12th day of January, 1959.

BANK OF IDAHO,  
Formerly Continental State Bank, an Idaho corporation, Principal;

By /s/ JAMES BYERS,  
Its President.

[Seal] UNITED PACIFIC INSURANCE COMPANY,  
Surety;

By /s/ JENS W. SWAN,  
Its Attorney in Fact.

Countersigned.

/s/ JENS W. SWAN,  
Resident Agent for United Pacific Insurance Company at Boise, Idaho.

Surety and amount approved this 12th day of January, 1959.

/s/ FRED M. TAYLOR,  
District Judge.

[Endorsed]: Filed January 12, 1959.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Wickahoney Sheep Company, an Idaho corporation, and one of the Defendants above named, does hereby appeal to the United States Court of Appeals for the Ninth

Circuit from that final judgment made and entered in this action on the 18th day of December, 1958.

Dated this 12th day of January, 1959.

HAWLEY & HAWLEY,  
By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Defendant  
Wickahoney Sheep Co.

Service of copy acknowledged.

[Endorsed]: Filed January 12, 1959.

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[Title of District Court and Cause.]

### BOND FOR COSTS ON APPEAL

Know All Men By These Presents:

That we, Wickahoney Sheep Company, an Idaho corporation, one of the above-named Defendants, as principal, and United Pacific Insurance Company, a corporation organized and existing under the laws of the State of Washington, and duly authorized to transact a surety business in the State of Idaho, as surety, do hereby jointly and severally acknowledge that we are held and firmly bound unto C. A. Sewell, Orene H. Sewell and Orville R. Wilson, Plaintiffs above named, in the sum of \$300.00, to be paid to the said Plaintiffs, their successors, executors, administrators and assigns.

The condition of this bond is that whereas the Defendant above named, Wickahoney Sheep Com-

pany, has appealed to the Court of Appeals for the Ninth Circuit by notice of appeal filed January 12, 1959, from the final judgment of this court made and entered on December 18, 1958, and if the Defendant Wickahoney Sheep Company shall pay to Plaintiffs all costs adjudged against it if said appeal be dismissed or the said judgment affirmed, or such costs as the said appellate court may award if the judgment be modified, then this bond is to be void, but if the Defendant Wickahoney Sheep Company fails to perform this condition, payment of the amount of this bond shall be due and made forthwith.

Signed, sealed and delivered this 12th day of January, 1959.

WICKAHONEY SHEEP CO.,  
Principal;

By/s/ L. E. HAIGHT,  
Its Vice President.

[Seal] UNITED PACIFIC INSUR-  
ANCE COMPANY,  
Surety;

By /s/ JENS W. SWAN,  
Its Attorney in Fact.

Countersigned:

/s/ JENS W. SWAN,  
Resident Agent for United Pacific Insurance Com-  
pany at Boise, Idaho.

[Endorsed]: Filed January 12, 1959.

In the District Court of the United States in and  
for the District of Idaho, Southern Division

No. 3239

C. A. SEWELL, ORENE H. SEWELL, and  
ORVILLE R. WILSON,

Plaintiffs,

vs.

WICKAHONEY SHEEP COMPANY, an Idaho  
Corporation, and BANK OF IDAHO (for-  
merly Continental State Bank), an Idaho Cor-  
poration,

Defendants.

Honorable Fred M. Taylor, Judge.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Appearances:

For the Plaintiff:

LANGROISE & SULLIVAN,  
Boise, Idaho.

For the Defendant Wickahoney Sheep Com-  
pany:

HAWLEY & HAWLEY, by  
MR. JESS B. HAWLEY, JR.,  
Boise, Idaho.

For the Defendant Bank of Idaho:

ELAM & BURKE, by  
MR. LAUREL ELAM,  
Boise, Idaho.

Boise, Idaho, April 10, 1958, 10:00 o'Clock A.M.

The Clerk: Number 3339, C. A. Sewell, et al., Plaintiff versus Wickahoney Sheep Company and Bank of Idaho, for trial before the Court without a jury.

The Court: Are you ready to proceed in this matter, gentlemen?

Mr. Hawley: Yes, we are, your Honor.

Mr. Langroise: Yes, we are, your Honor.

The Court: You may proceed.

Mr. Langroise: With respect, your Honor, to the pre-trial transcript, we have some corrections that we have agreed upon that should be made in regard to it.

The Court: May I suggest, Mr. Langroise, in making your record, instead of filing that that you restate your stipulations into the record—what you have agreed upon, and make your record accordingly.

Mr. Hawley: Maybe we can indicate the part and read back the transcript and stipulate as we go along.

The Court: You may do it any way you want to, Mr. Hawley. You can take the transcript from the pre-trial and read your stipulations, then you will not have to file that.

Mr. Langroise: That is agreeable to us.

The Court: You may proceed.

Mr. Langroise: I am assuming, if your Honor please, [5\*] that a statement on the part of the plaintiff would be of little or no value to the Court.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: In view of the conference yesterday, the Court has an idea of what this matter involves.

Mr. Langroise: We will proceed with our proof.

The Court: Very well.

Mr. Lagroise: Call Mr. Sewell.

C. A. SEWELL

a witness call on behalf of the plaintiff, having been first duly sworn was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: C. A. Sewell.

Direct Examination

By Mr. Langroise:

Q. State your name, please.

A. C. A. Sewell.

Q. You are one of the plaintiffs in this action?

A. I am.

Q. Mr. Sewell, directing your attention to the early spring of 1956, did you have any contact with the then Continental State Bank, which is now the Bank of Idaho, or any of the officers?

A. I did.

Q. And with whom did you talk?

A. W. A. Goodall. [6]

Q. And what position did W. A. Goodall hold with respect to the defendant company, Bank of



(Testimony of C. A. Sewell.)

Idaho?           A. He was president.

Q. Do you remember about when that was?

A. Oh, about the twelfth, thirteenth, or fourteenth of April.

Q. And what were you talking to him about?

Mr. Hawley: If your Honor please, I will object unless a proper foundation is laid as to who was present during the conversation, and as to whether or not there were any of the representatives of the defendant Wickahoney present.

Mr. Langroise: I will lay the foundation.

Q. (By Mr. Langroise): Who was present?

A. Goodall and I.

Q. Just the two of you?           A. Yes, sir.

Q. Where did this conversation take place?

A. At his desk in the Continental Bank office.

Q. Was this conversation with respect to the contract of purchase of Wickahoney Sheep Company from you of certain personal property?

A. Indirectly, yes.

Q. Now, will you state what was said at that time? [7]

Mr. Hawley: To which I will object, your Honor, that it is hearsay as to the Wickahoney Sheep Company.

The Court: Objection overruled. The Bank of Idaho is a defendant here.

The Witness: I went in to ask Bill Goodall for a loan.

(Testimony of C. A. Sewell.)

Q. (By Mr. Langroise): Just tell us what was said.

A. I said, "Bill, you have a contract of purchase and sale at your bank between the Wickahoney and me. There is a payment due of twenty thousand dollars (\$20,000.00) in October, and I would like to borrow twenty thousand dollars (\$20,000.00) and assign the contract to you for security."

Q. Was there more than one contract you were referring to—more than one contract at that time?

A. I was referring to the escrow. Yes, there was two contracts.

Q. And one of the contracts was for the purchase of the personal property, being the instrument of December 15, 1955? A. Right.

Q. What did Mr. Goodall tell you?

A. He said, "We will get the file out, and we'll write you a letter of what we'll do."

Q. Did you subsequently receive a letter from Mr. [8] Goodall, president of the then Continental State Bank, now the Bank of Idaho?

A. I did.

The Clerk: Marked as plaintiff's exhibit No. 1 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 1 for identification.)

Q. (By Mr. Langroise): Handing you what has been marked Exhibit No. 1 for the purpose of identification, what is that? A. Yes, sir.

Q. Is that the letter you received from Mr.

(Testimony of C. A. Sewell.)

Goodall with respect to the conversation you related you had?      A. It is.

Mr. Langroise: We offer it in evidence.

Mr. Hawley: May I see it, please? I have no objection to the document except for the last half of the second last sentence, commencing with, "however, any evidence" to the conclusion of the exhibit; upon the grounds that that portion of the letter is immaterial and irrelevant and not within the issues of the case, and has no materiality at all.

Mr. Langroise: If your Honor please, this letter is with respect to notice on the part of the defendant company, Bank of Idaho, as to the actual notice, in addition to the notice they had of the escrow. [9]

The Court: It may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 1 and was received in evidence.)

Mr. Langroise: Not, at this time—if you will have that marked, please.

The Clerk: Marked as Plaintiff's Exhibit No. 2 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 2 for identification.)

Mr. Langroise: Mr. Elam, you furnished us this photostatic copy. Is that all you have in the way of a financial statement of the Wickahoney Sheep

(Testimony of C. A. Sewell.)

Company in connection with any of the loans made by the bank?

Mr. Elam: That is right.

Mr. Langroise: We offer it in evidence.

Mr. Hawley: No objection, your Honor.

The Court: It may be marked Exhibit No. 2 and admitted in evidence.

(The document referred to was marked Plaintiff's Exhibit No. 2 and was received in evidence.)

Mr. Langroise: Now, if I might have from the file—I would like to have the mortgages. I will ask that that be marked for identification, please.

The Clerk: Marked for identification as Plaintiff's Exhibit No. 3. [10]

(The document referred to was marked Plaintiff's Exhibit No. 3 for identification.)

Mr. Langroise: And the other two marked also, please.

The Clerk: Marked Plaintiff's Exhibits No. 4 and No. 5 for identification.

(The documents referred to were marked Plaintiff's Exhibits No. 4 and No. 5 for identification.)

Mr. Langroise: At this time, the Plaintiff offers in evidence what has been marked Plaintiff's Exhibit No. 3, being a chattel mortgage, having been executed by the Wickahoney Sheep Company;

(Testimony of C. A. Sewell.)

signed by the president, dated the first of November. We also offer in evidence Plaintiff's Exhibit No. 4, a chattel mortgage from Wickahoney Sheep Company to Continental State Bank, dated the fifth of January, 1957. We offer in evidence Plaintiff's Exhibit No. 5, a chattel mortgage from Wickahoney Sheep Company to the Continental State Bank, dated the twenty-seventh day of November, 1956.

Mr. Hawley: We have no objection to the admission of Exhibits 3, 4 and 5, as Plaintiff's Exhibits in evidence.

The Court: They may be admitted.

(The documents referred to were marked Plaintiff's Exhibits No. 3, No. 4, and No. 5, and were received in evidence.) [11]

Q. (By Mr. Langroise): Mr. Sewell, did you receive fifteen thousand dollars (\$15,000.00) from Wickahoney Sheep Company on October 10, 1956, or at any time? A. No, sir.

Q. When, Mr. Sewell, did you first become advised, if you did become advised, of any chattel mortgage given by the Wickahoney Sheep Company to the Continental State Bank covering the sheep?

A. It was January 2nd or 3rd, 1957.

Q. January 2nd or 2rd of 1957? A. Yes.

Q. Did you give any notice to Wickahoney Sheep Company of purported defaults with respect to the agreement of December 15, 1955?



(Testimony of C. A. Sewell.)

A. Yes, sir.

Mr. Langroise: If you will mark that, please.

The Clerk: Marked as Plaintiff's Exhibit No. 6 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 6 for identification.)

Q. (By Mr. Langroise): Handing you what has been marked as Plaintiff's Exhibit No. 6, I will ask you if that is a copy, or the original of signed copies which were sent of the default [12] notice? A. Yes, sir.

Mr. Langroise: We offer in evidence Plaintiff's Exhibit No. 6.

Mr. Hawley: We stipulated on the admission of that.

Mr. Langroise: Yes.

Mr. Hawley: We have no objection.

The Court: Exhibit No. 6 may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 6 and was received in evidence.)

Mr. Langroise: I will ask you to have these two marked, if you please.

The Clerk: Marked as Plaintiff's Exhibits No. 7 and No. 8 for identification.

(The documents referred to were marked Plaintiff's Exhibits No. 7 and No. 8 for identification.)



(Testimony of C. A. Sewell.)

Mr. Langroise: At this time, if your Honor please, we offer in evidence Plaintiff's Exhibits 7 and 8, being copies of letters of transmittal to the Continental State Bank, now the Bank of Idaho, and the Wickahoney Sheep Company of the default notice, and, being attached to each the receipt for certified mail and the returned signature card.

Mr. Hawley: We have no objection to Exhibits 7 and 8.

The Court: Exhibits 7 and 8 may be admitted.

(The documents referred to were marked Plaintiff's Exhibits No. [13] 7 and 8 and were received in evidence.)

Q. (By Mr. Langroise): Calling your attention, Mr. Sewell, to plaintiff's exhibit No. 6, and directing your attention to the paragraph number two, I will ask you where you got the figures with respect to that?

A. I got it off of the mortgage.

Q. Handing you Plaintiff's Exhibit No. 4, being the mortgage dated January 5, 1957, I will ask you if that is the mortgage to which you refer that you took the number placed in your default notice?

A. Right.

Q. Mr. Sewell, with respect to the personal property sold, or the sale agreement which was entered into between you and the Wickahoney Sheep Company on December 15, I will ask you whether or not the taxes for the year 1954 were paid?

(Testimony of C. A. Sewell.)

A. Yes, sir.

Q. I will ask you whether or not your prorata share of the taxes for the year 1955 were paid by you?

A. I paid all of the taxes and the Wickahoney Sheep Company refunded their prorata share.

Q. You are talking about the year 1955?

A. Right.

Mr. Langroise: Will you have that marked, please, [14] unless you have the original. The letter from Mr. Hawley to the Bank, dated April 18, 1957.

Mr. Elam: It is there.

Mr. Langroise: Let's mark the original.

The Clerk: Marked as Plaintiff's Exhibit No. 9 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 9 for identification.)

Mr. Langroise: I would like, also, to have marked—have you the original in your files with you here of the letter to Continental State Bank by Mr. Sullivan, dated April 23? I would like to have that marked also as an exhibit.

The Clerk: Marked Plaintiff's Exhibit No. 10 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 10 for identification.)

Mr. Langroise: We offer in evidence Plaintiff's Exhibit No. 9 for identification; being a letter from

(Testimony of C. A. Sewell.)

Jess B. Hawley of the firm of Hawley and Hawley to the Continental State Bank, attention Mr. Claude Miller, president, dated April 18, 1957.

Mr. Hawley: No objection, your Honor.

The Court: It may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 9 and was received in evidence.) [15]

Mr. Langroise: We offer in evidence Plaintiff's Exhibit No. 10; being a letter addressed to the Continental State Bank, dated April 23, Re: Wickahoney Sheep Company Purchase Agreement, signed by Mr. W. E. Sullivan.

Mr. Hawley: No objection, your Honor.

The Court: Exhibit No. 10 may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 10 and was received in evidence.)

Mr. Langroise: If I may have that marked, please.

The Clerk: Marked Plaintiff's Exhibit 11 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 11 for identification.)

Mr. Langroise: We offer in evidence Plaintiff's Exhibit No. 11. A letter on the stationery of Hawley and Hawley, signed by J. B. Hawley, it is dated April 6, 1957, addressed to Mr. Orville R. Wilson;

(Testimony of C. A. Sewell.)

Mr. C. A. Sewell, and Mrs. C. A. Sewell, care of Mr. Orville Wilson, First National Bank Building, Elko, Nevada.

Mr. Hawley: No objection, your Honor.

The Court: Exhibit No. 11 may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 11 and was received in evidence.)

Mr. Langroise: It is my understanding that counsel for the defendants stipulate that all of the personal property [16] described in the contract of December 15, 1955, between C. A. Sewell and Orene Sewell, his wife, and Wickahoney Sheep Company was delivered to Wickahoney Sheep Company as therein described on or about the eighteenth of October, 1955.

Mr. Hawley: We will stipulate to that, your Honor.

The Court: Very well.

Q. (By Mr. Langroise): Mr. Sewell, did you have at the time the notice was sent out, had you had any opportunity to count the number of sheep remaining with the Wickahoney Sheep Company?

A. No, sir.

Q. Now, were you out near the Wickahoney Sheep operation early in January of 1957?

A. Yes, I was there about every week.

Q. When were you first there, do you recall—about when?

(Testimony of C. A. Sewell.)

A. The second or third of January.

Q. At that time, had any of the sheep that Wickahoney Sheep Company had there that they had gotten in the purchase agreement lambbed?

A. No, sir.

Q. Do you know when they started to lamb, Mr. Sewell?

A. About the fifteenth of January.

Q. And how long would the lambing period continue?

A. Oh, about thirty days. [17]

Q. Mr. Sewell, have you had any experience in the sheep business?

A. Yes, sir.

Q. And over what period of time?

A. From 1928 to about 1936, and I bought the Coig Outfit in 1952, and ran it until I sold it to the Wickahoney Sheep Company.

Mr. Hawley: Until what?

The Witness: I sold it to the Wickahoney Sheep Company.

Q. (By Mr. Langroise): Do you know whether or not after the lambs are born, they are with their mother and dependent on their mother for food?

A. Yes.

Q. How long do they remain as suckling lambs, if you know?

A. You mean winter lambs?

Q. Yes, January 15 and continuing?

A. When we were running the Sheep Company we sold to the Wickahoney Sheep Company, the lambs stayed on their mother until they were shipped.

Q. And they were on the mother until the time



(Testimony of C. A. Sewell.)

of shipment?           A. Right. [18]

Q. When did you generally ship?

A. First of July—started about the first of July.

Q. July 1st?           A. Correct.

Q. And when did you normally lamb when you were running the outfit?

A. We normally started to lamb about the middle of January.

Mr. Langroise: Will you, gentlemen, as counsel for the defendant, stipulate that Plaintiff's Exhibit No. 10 was personally delivered by Mr. Sullivan to a Mr. Cunningham, an employee of the Bank of Idaho on the twenty-fourth of April, 1957?

Mr. Hawley: We will so stipulate, your Honor.

Mr. Langroise: Do you stipulate, also, gentlemen, that Wickahoney Sheep Company received a copy of this letter within a few days of the date of April 24?

Mr. Hawley: I don't think we can stipulate that unless we check the file. Do you have a letter of transmittal to Wickahoney?

Mr. Langroise: Will you stipulate, Mr. Hawley, that you received a copy of the letter around the twenty-fourth, or twenty-fifth of April, 1957.

Mr. Hawley: No, I cannot stipulate until I have checked my records. I don't have it in my recollection. I'll [19] check the file, and if I have it, I will so stipulate.

Mr. Langroise: And you, Mr. Haight?



(Testimony of C. A. Sewell.)

Mr. Haight: I will have to check the records, which I do not have here.

Mr. Langroise: That is a copy of it.

Mr. Hawley: What was the date of the Exhibit?

Mr. Langroise: April 23, Mr. Hawley.

The Court: Are we still talking about Exhibit 10?

Mr. Langroise: Exhibit 10, yes, your Honor.

Mr. Hawley: Is that a letter of April 24, 1957?

Mr. Langroise: April 23, Mr. Hawley.

Mr. Hawley: I will stipulate that the letter was—a copy of Exhibit 10 was sent to me, your Honor. The date being unknown to me as to the receipt of the document, but was in a few days of that time.

Mr. Langroise: When you say, “within a few days of that date——”

Mr. Hawley: I could not stipulate. I have the document, and I received it in the regular course of mail, but I do not have the envelope.

Mr. Langroise: Mr. Haight, have you found it?

Mr. Haight: Yes.

Mr. Langroise: And you make a similar stipulation?

Mr. Haight: I have it in the file, but I cannot say when I received it. [20]

Q. (By Mr. Langroise): Mr. Sewell, within ninety (90) days of January 17, did Wickahoney Sheep Company pay to you or your account \$15,000.00?      A. No, sir.

(Testimony of C. A. Sewell.)

Q. Did Wickahoney Sheep Company, within that period, advise you that any replacements had been placed in the band to bring it up to the amount sold by you to them? A. No, sir.

Q. Within that period, did you receive from Continental State Bank any notice of their acknowledgement that their chattel mortgages, which they had on file, were inferior to yours——

A. No, sir.

Q. ——or did they offer to release them?

A. No, sir.

Q. Following the ninety (90) day period, say April 18, 19, 20, did Wickahoney Sheep Company deliver to you or your possession any of the personal property which they were buying from you under the contract? A. No, sir.

Mr. Langroise: Do you have the Receiver's Inventory, Mr. Blaine Austin's?

The Court: I believe it is in the file.

(The document referred to was [21] removed from the Court's file by the Clerk of the Court.)

Mr. Langroise: Will counsel stipulate that the Inventory filed by the Receiver, in this case, Mr. Blaine Austin, being filed on October 25, 1957, is an accurate inventory of the property which was received and an inventory by the Receiver under the Order of the Court?

Mr. Hawley: I will stipulate that that is the inventory as filed with this Court.

(Testimony of C. A. Sewell.)

Mr. Langroise: Do you stipulate that it is the number of sheep; bucks, small lambs, is the number which the Receiver received from the Wickahoney Sheep Company?

Mr. Hawley: I will so stipulate, your Honor.

The Court: Very well.

Mr. Langroise: And may it be understood that we can substitute a copy of the inventory in that respect?

The Court: You may.

Mr. Hawley: I wonder if we may mark and put in evidence a copy of the inventory?

Mr. Langroise: I do not have a copy. Do you have one?

Mr. Hawley: I am sure I have. Mr. Clerk, what date does the inventory bear?

The Clerk: It was filed October 25, 1957, at 2:00 p.m.

Mr. Hawley: Thank you. [22]

Mr. Langroise: That may be marked.

The Clerk: Marked as Plaintiff's Exhibit No. 12 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 12 for identification.)

Mr. Langroise: We offer Plaintiff's Exhibit No. 12 in evidence.

Mr. Hawley: We have no objection, your Honor.

(Exhibit No. 12 received in evidence.)

Mr. Langroise: In so far as the stipulation, the

(Testimony of C. A. Sewell.)

inventory has reference to Exhibit 12, is that correct?

Mr. Hawley: That is a conformed and accurate copy of the Receiver's Inventory?

Mr. Langroise: So far as the stipulations, is the amount received?

Mr. Hawley: The same stipulation will obtain as to the subsequent document, Exhibit 12.

Mr. Langroise: And has reference to it?

Mr. Hawley: Yes.

Mr. Langroise: Counsel, will you stipulate that the only sheep run, or operated by the Wickahoney Sheep Company, were the sheep being purchased under a purchase agreement from Sewell, et al.?

Mr. Hawley: No, your Honor, I cannot so stipulate.

Q. (By Mr. Langroise): Mr. Sewell, when were replacements made, in the [23] sheep industry, for sheep being operated—what time of the year, if you know?

Mr. Hawley: I will object to the question on the basis of its immateriality.

The Court: I am going to permit him to answer.

The Witness: We always put the replacements in in June or July, because we put the bucks in in August.

Q. (By Mr. Langroise): Now, Mr. Sewell, are you familiar with the practice of the industry with respect to the type of replacements used in the operating of the sheep?

(Testimony of C. A. Sewell.)

A. We always put yearlings in.

Q. Are you generally familiar with the fair market value of yearlings used for the replacement during June or July or August of 1956?

A. I think they were worth twenty-four or twenty-five dollars a head.

Q. Now, directing your attention to the year 1957, were you familiar with the fair market value of year old ewes for replacement in July or August of that year?

A. I don't think the value changed much from the year before.

Q. And the fair market value would be——

A. Twenty-four or twenty-five dollars.

Mr. Langroise: Now, if we can have the Interrogatories [24] of Wickahoney Sheep Company?

The Clerk: What is the date?

Mr. Langroise: They were filed on October 22, 1957, I believe. I would like the answers if I might have them. We offer in evidence the summary of sales with reference to Wickahoney Sheep Company. May I read it into the record?

The Court: Is there any objection?

(Off the record discussion by Court and Counsel.)

The Court: I assume, Mr. Langroise, that you are going to introduce the summary of sales?

Mr. Langroise: We offer it in evidence.

The Court: Will you identify it, please?



(Testimony of C. A. Sewell.)

Mr. Langroise: Yes, your Honor. We offer Exhibit "A" attached to the Interrogatory of the Wickahoney Sheep Company; designated "A Summary of Sales," showing date, sold to, description, and amount as designated.

Mr. Hawley: In respect to Interrogatory No. 11, which should be read into the record to tie it in.

Mr. Langroise: "Interrogatory No. 11: Have any of the ewes or bucks being sold to Wickahoney Sheep Company by the plaintiff under that certain purchase agreement dated December 15, 1955, between C. A. Sewell and Orene H. Sewell, husband and wife, and Wickahoney Sheep Company, a copy of which purchase agreement is attached as Exhibit 'A,' or any of [25] the lambs or increase thereof, or any of the wool obtained from the same been sold, and if so, what was sold and to whom, and on what date, and what was the sale price for each of said sales?"

Mr. Hawley: We have no objection to the admission of Exhibit "A" of the Interrogatory. Do you want to pull that? I may have a true copy of it.

Mr. Langroise: We have a copy. May we use that?

Mr. Hawley: Yes.

The Clerk: Marked as Plaintiff's Exhibit No. 13 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 13 for identification.)



(Testimony of C. A. Sewell.)

Mr. Langroise: We offer Plaintiff's Exhibit No. 13 in evidence as the summary and answer to Interrogatory No. 11, which has been read into the record.

Mr. Hawley: We stipulated the Interrogatories, we have no objection.

The Court: It is now marked Exhibit 13, and may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 13 and was received in evidence.)

Mr. Langroise: We offer in evidence Interrogatory No. 23, addressed to the Wickahoney Sheep Company as follows: "Does Wickahoney Sheep Company own any sheep, or is it [26] purchasing any sheep on contract, or otherwise, other than the ewes and bucks and the lambs and the increase thereof, described in the Purchase Agreement, dated December 15, 1955, between C. A. Sewell and Orene Sewell, husband and wife, as sellers, and the Wickahoney Sheep Company as the purchasers; copy of which purchase agreement is attached as Exhibit "A," and a description of such sheep?" To which interrogatory the Wickahoney Sheep Company answered, "No."

Mr. Hawley: No objection, your Honor.

The Court: Mr. Langroise, we will take a ten minute recess.

(Testimony of C. A. Sewell.)

(Whereupon the Court recessed for ten minutes.)

The Court: You may proceed, gentlemen.

(Mr. Sewell resumed the stand.)

Mr. Langroise: May I have that marked, please?

The Clerk: Plaintiff's Exhibit No. 14 marked for identification.

(The document referred to was marked Plaintiff's Exhibit No. 14 for identification.)

Mr. Langroise: At this time, if your Honor please, with respect to the Interrogatory to the Bank of Idaho, I would like to offer Interrogatory No. 7. "If any of said loans, or any part thereof, made by the Bank of Idaho to Wickahoney Sheep Company have been paid by Wickahoney Sheep Company, [27] from what source did the Wickahoney Sheep Company obtain such money to make such payment?" And the answer, "Reference is made to the Schedule of Loans attached to show how payment was made by Wickahoney Sheep Company and from what sources Wickahoney Sheep Company obtained the money to the extent such information is available from the records of the Bank of Idaho." In that connection, we offer in evidence Plaintiff's Exhibit No. 14, being a Schedule of the Payments made and from what sources.

Mr. Hawley: May I enquire, Mr. Langroise, was

(Testimony of C. A. Sewell.)

there an additional third sheet which encompasses the Schedule of Loans?

Mr. Langroise: Yes, there is. Do you want that?

Mr. Hawley: Yes. Will you attach that? I have no objection to the admission of the interrogatories.

The Court: Exhibit 14 may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 14 and was received in evidence.)

Mr. Langroise: I will ask you to mark this as Plaintiff's Exhibit for identification, No. 15.

The Clerk: Marked for identification as Plaintiff's Exhibit No. 15.

(The document referred to was marked Plaintiff's Exhibit No. 15 for identification.)

Mr. Langroise: Counsel, we hand you Plaintiff's [28] Exhibit No. 15 for identification, which is a copy of the Assignment of Purchase, and I hand you an executed copy of the assignment by C. A. Sewell and Orene Sewell, and assignment of purchase being dated the twenty-seventh of June, 1956.

Mr. Hawley: We will stipulate that the document is a true and correct copy of the Assignment of Purchase Agreement.

Mr. Langroise: We offer it in evidence.

The Court: Any objection?

Mr. Hawley: No, your Honor.

(Testimony of C. A. Sewell.)

The Court: It may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 15 and was received in evidence.)

Mr. Langroise: Counsel, it is stipulated that the animals and other personal property——

Mr. Hawley: Where are you reading from?

Mr. Langroise: Page 5. I am re-phrasing it; being described in the Contract of Sale between C. A. Sewell and his wife, and Wickahoney, remained in the possession of Wickahoney until the Receiver took possession.

Mr. Hawley: Excepting those that were sold, we so stipulate.

Mr. Langroise: And that Wickahoney sold?

Mr. Hawley: Yes.

Q. (By Mr. Langroise): Mr. Sewell, I am not quite sure—it may be [29] duplication if I asked whether you ever received the \$15,000.00 on October 10, 1956, from Wickahoney or any other source?

A. No, sir.

Q. Did Wickahoney or anyone turn over to you the sheep and other personal property described in the Purchase Agreement of December 15, 1955, prior to, or at the time suit was filed by you with others against the Wickahoney Company and the Bank of Idaho? A. No, sir.

Q. Mr. Sewell, are you familiar with or acquainted with John Clay and Company?

A. Yes, sir.

(Testimony of C. A. Sewell.)

Q. Who are they?

A. They are a livestock commission firm.

Q. Are they well known?

A. They operate on every large market in the country and they also buy on orders throughout the country.

Q. Were you familiar with the fair market value of lambs during the summer, or during July and August of 1957?      A. Yes, sir.

Q. Have you any opinion as to whether, for 1,173 lambs, a fair market price would be \$25,713.31?      A. How much is that a head?

Q. I have not computed that. [30]

A. What was the price?

Q. One thousand one hundred seventy-three head, \$25,713.31.

A. That is about \$22.00 a head. I think it was.

Q. You think that would be a fair market price?

A. Yes, sir.

Q. I will ask you if on July 6, 1957, whether in your opinion a fair market price for 1,086 lambs would be \$22,357.13?

A. Twenty-two thousand, what?

Q. Twenty-two thousand three hundred fifty-seven dollars thirteen cents.

A. I think so.

Q. I will ask you, Mr. Sewell, whether or not, in your opinion, on August 14, the fair market value of 1,327 lambs would be \$24,470.38?



(Testimony of C. A. Sewell.)

The Court: You are talking about 1957, Mr. Langroise?

Mr. Langroise: Yes, your Honor, thank you, for 1957.

The Court: What was the number of head?

Mr. Langroise: Thirteen twenty-seven.

The Court: For how much money?

Mr. Langroise: Twenty-four thousand four hundred seventy dollars thirty-eight cents.

Q. (By Mr. Langroise): Have you an opinion on that? [31]

A. I think that would be a fair market value.

Q. I will ask you, on or about the 15th of August—about that date—within a week, of 1957, whether the fair market price for 689 lambs would be \$11,869.68.

A. I think so. That is about \$17.00 plus a lamb.

Q. You think that would be a fair market value?

A. Yes.

Q. Were you, generally, in the year 1957 familiar with the market price of wool?

A. Yes, sir.

Q. I will ask you whether or not the fair market price of 30,119 pounds of wool, that is March 19, 1957, would be \$17,017.20, in your opinion?

The Court: What was the figure?

Mr. Langroise: Seventeen thousand seventeen dollars twenty cents.

Mr. Hawley: May I inquire at this point, is



(Testimony of C. A. Sewell.)

this his answer to an interrogatory and the answer that is in evidence?

Mr. Langroise: Yes.

Mr. Hawley: We might refer to that.

Mr. Langroise: I am tying it into Exhibit 13.

The Witness: I think that was a fair price.

Q. (By Mr. Langroise): I will ask you whether or not you were familiar [32] with the general fair market value of pelts along in April—April 19, 1957? A. Yes, sir.

Mr. Langroise: I am unable to give you the amount sold. I will have to withdraw the question, I don't know how many were sold at that time. If I might have the Inventory of the Appraiser, please?

The Court: No. 12.

Q. (By Mr. Langroise): Mr. Sewell, do you recall whether or not among the personal property described in the Sales Agreement between you and Wickahoney, there was included in it any automobiles or a pickup?

Mr. Hawley: I believe the best evidence, your Honor, would be the Inventory.

The Court: He may answer that, "yes or no." He asked if he recalled. You may answer the question, Mr. Sewell.

The Witness: Yes, sir.

Q. (By Mr. Langroise): And what type of motor vehicle was being sold in the contract?

A. It was an International truck.

(Testimony of C. A. Sewell.)

Q. Describe it, if you please?

A. I believe it was a 1952 2-ton with a two speed [33] axle.

Q. And in what condition was it?

A. It had a new motor in it a short time prior to that.

Q. Would it be the one described in Exhibit "B," attached as a 1954 11½ ton International?

A. That could be, I thought it was a 1952.

Q. Was that the only vehicle being sold under the terms of the contract? A. It was.

Q. Have you any opinion as to the fair market value of that vehicle?

A. I think it was worth——

Mr. Hawley: I will object unless he fixes a time.

The Court: Yes, if you will fix a time, Mr. Langroise.

Q. (By Mr. Langroise): Have you an opinion as to the fair market value of that vehicle on April 20, 1957? A. Yes, sir.

Q. What, in your opinion, was the fair market value of it?

A. I think it was worth \$1,000.00.

Mr. Langroise: Counsel, with respect to the instruments, we are agreeing, and the Bill of Sale, that was [34] escrowed with the Continental State Bank, or Bank of Idaho as the name now is. Do you stipulate that they were not returned pursuant to the demand of the Plaintiff to the Plaintiff?

(Testimony of C. A. Sewell.)

Mr. Hawley: Yes, we will so stipulate that they were not returned and the Bill of Sale was deposited in the registry of the Court and not returned to the Plaintiff.

Mr. Langroise: If your Honor pleases, that completes our direct examination of Mr. Sewell.

### Cross-Examination

By Mr. Hawley:

Q. Mr. Sewell, when did you last see the 1954 truck as having a value of \$1,000.00, in your opinion, as of April 1957?

A. It was probably late in the winter of 1955.

Q. You had made no inspection subsequent to that time?           A. No, sir.

Q. You have testified as an expert in connection with the values of sheep.

Mr. Hawley: That exhibit that your Honor was making reference to, was that 12, the Inventory?

The Court: Yes.

Q. (By Mr. Hawley): Handing you what has been marked as Exhibit 13, [35] Mr. Langroise questioned you with respect to that exhibit, do you have any quarrel that the amount received for the sales of various items on there were not sold at the fair market value at the time?

A. The question before, you asked if I was an expert. I am not an expert.

Q. You have had thirty years in the sheep business?

(Testimony of C. A. Sewell.)

A. It makes quite a difference, though.

Q. We won't be legalistic about it. Since 1928 you have been in the sheep business?

A. I was in from '28 to '36, and then again in 1952 to '56.

Q. And was that your principal source of livelihood during that period?

A. I have been in the livestock business. I had cattle, too.

Q. You have been in the business during the period you stated, and made your livelihood as a result of that?      A. Right.

Q. And you have bought and sold livestock?

A. Right.

Q. And you have bought and sold sheep. Now, referring to Exhibit 13, I will ask you whether or not you have any quarrel on the proceeds of the items that you testified to Mr. Langroise as being the fair market value. [36]

The Court: I think it is Exhibit No. 12 that you want, Mr. Hawley.

Mr. Hawley: It is No. 13, your Honor.

The Court: Very well.

The Witness: No.

Q. (By Mr. Hawley): So they all went at the fair market value at the time when they were sold?

A. That is what I think.

Q. Now, with respect to ewes, is a high value with a ewe at one year?

(Testimony of C. A. Sewell.)

A. Well, I think probably the highest would be two year old ewes.

Q. Two years old? A. Yes, sir.

Q. And where is the breaking point, at two, the breaking point where the values decrease?

A. No.

Q. Where is the breaking point?

A. I would say four or five—four, possibly.

Q. In 1956, what was the difference in value between a standard average four year old ewe, and a five year old ewe?

A. Oh, probably three or four dollars a head.

Q. Would the same spread obtain between a five year old ewe and a six year old ewe? [37]

A. No.

Q. What would it be?

A. Oh, a dollar or so.

Q. Would it be as much as two dollars?

A. I don't think so.

Q. How much—a dollar seventy-five?

A. A dollar and a half, I'd say.

Q. And how about the spread between a six and seven year old ewe?

Mr. Langroise: I will object, if your Honor please, as not being proper cross examination.

The Court: Objection sustained.

Q. (By Mr. Hawley): Now, you testified in answer of a question by Mr. Langroise that at no time did you get back the sheep, and on the second question, you testified that at no time prior to the



(Testimony of C. A. Sewell.)

filing of the suit, or at the time of filing of the suit, did we turn back the sheep to you, is that correct?      A. That's right.

Q. Do you recall on or about the twenty-first, or twenty-second, or twenty-third of August, receiving a letter from Ciriaco Lezamiz, president of Wickahoney Sheep Company?

A. What year are you talking about?

Q. 1957. [38]

A. I received a letter. He delivered it in person.

Mr. Hawley: Do you have the original of that letter, Mr. Langroise?

Mr. Langroise: No, I don't have.

Mr. Hawley (Directing question to Mr. Wilson in the Court Room): Do you have the original of that letter, it would be August of 1957?

The Clerk: Marked as Defendant's Exhibit No. 16 for identification.

(The document referred to was marked Defendant's Exhibit No. 16 for identification.)

Q. (By Mr. Hawley): Handing you what has been marked for identification as Defendant's Exhibit No. 16, would you state whether or not that is a letter, or an executed counter-part of the letter, which you received on or about the date of August 21, 1957?      A. Yes, I got this.

Mr. Hawley: We offer Defendant's Exhibit 16 into evidence.

Mr. Langroise: To which we object, if your Honor please, on the grounds it is irrelevant, im-



(Testimony of C. A. Sewell.)

material and incompetent for the purposes here; written long after the suit and the sale of everything except the few remnants he left.

Mr. Hawley: He testified he never, at any time, had—— [39]

Mr. Langroise: No——

The Court: The objection will be sustained. His testimony was that the sheep were not returned to him on demand or before the beginning of the suit.

Q. (By Mr. Hawley): I will ask you, if at any time, the defendant Wickahoney Sheep Company tendered to you any of the personal property involved in the purchase contract?

Mr. Langroise: To which we object, if your Honor please, as not being material, and incompetent.

The Court: Objection sustained. Your question has to go prior to the lawsuit, Mr. Hawley.

Mr. Hawley: Very well, your Honor. I will pass on to another field.

Q. (By Mr. Hawley): You have testified, Mr. Sewell, with respect to the escrow, and I believe you testified, if I am correct, that there were two agreements set up in the escrow; is that correct—you said two contracts?      A. That's right.

Mr. Hawley: May I have those documents marked, please?

The Clerk: Marked Defendant's Exhibits No. 17 and No. 18 for identification.

(Testimony of C. A. Sewell.)

(The documents referred to were marked Defendant's Exhibits No. 17 and No. 18 for identification.) [40]

Mr. Hawley: We will offer them merely as the original executed documents. They are part of the pleadings.

Mr. Langroise: We have no objection to 18. We do object to Defendant's Exhibit 17 on the grounds that it is immaterial, irrelevant, and incompetent to any of the issues here.

Mr. Hawley: He testified, your Honor, and we offer them. Eighteen, it is stipulated that it be admitted, being a Purchase Agreement dated December 15, 1955.

The Court: Is that the agreement we are talking about here?

Mr. Hawley: Yes, and Exhibit 17—

Q. (By Mr. Hawley): Is that an executed original of the other agreement that was deposited in escrow that you have testified to?

The Court: The record may show Exhibit 18 has been admitted.

(The document referred to was marked Defendant's Exhibit No. 18 and was received in evidence.)

The Witness: The two agreements I am talking about was 18, that one, and the one that pertains to the real estate.

Q. (By Mr. Hawley): Handing you what has

(Testimony of C. A. Sewell.)

been marked as Defendant's [41] Exhibit No. 17, is that the one that pertains to the real estate?

A. No.

Q. It does not?           A. No.

The Clerk: Marked as Defendant's Exhibit No. 19 for identification.

(The document referred to was marked Defendant's Exhibit No. 19 for identification.)

Q. (By Mr. Hawley): You are being handed Defendant's Exhibit No. 19 for identification, can you state whether or not that is the escrow Agreement that bears your signature, and the document which you have testified about which were escrowed?           A. That's right.

Mr. Hawley: We offer it.

Mr. Langroise: On behalf of whom?

Mr. Hawley: We offer it as an exhibit.

Mr. Langroise: We object, if your Honor please, that it is irrelevant, and immaterial, and it is incompetent for the purpose of superseding the agreement between the Wickahoney Sheep Company and Mr. Sewell, or the plaintiff here, and also, object on the further ground that it is immaterial and irrelevant so far as the Bank of Idaho is concerned for the reason that the Bank of Idaho is here, not with respect [42] to their failure to deliver to us the escrow papers, and the contract between Sewell and Wickahoney and the Bank, but are here because of the receiving of monies and the conversion of property.

(Testimony of C. A. Sewell.)

The Court: Exhibit No. 19 will be admitted for what it is worth.

(The document referred to was marked Defendant's Exhibit No. 19 and was received in evidence.)

Mr. Hawley: Under that qualification, it appears to be a legal question.

Mr. Langroise: What is the date of the escrow agreement?

The Clerk: The 15th of December, 1955.

Mr. Langroise: Thank you.

Q. (By Mr. Hawley): Exhibit No. 6, admitted in evidence, is the Notice of Default. Mr. Sewell, this notice was mailed directly by you to the interested parties, is that correct?

A. Mailed by my attorney.

Q. That is Mr. Wilson, a party plaintiff in the litigation?

A. Yes, sir.

Q. Mailed by him to the interested parties?

A. I signed them in his office.

Q. And they were not mailed by the Bank, is that [43] correct?

A. Which bank?

Q. The Continental Bank, or the Bank of Idaho.

A. By the Bank?

Q. Not mailed by the bank—the Bank of Idaho, is that correct?

A. That's right.

Q. Now, referring again to the Notice of Default, which is Exhibit No. 6 in evidence, you have specified three items of default: Failure to pay \$15,000.00 on October 10, 1956; depletion of ewes

(Testimony of C. A. Sewell.)

and bucks to 3,718 from 4,005 ewes and 82 bucks; and item 3, the placing of the chattel mortgage by Wickahoney—the four chattel mortgages on the property—isn't that true?      A. That's right.

Q. And you specified no other items of default, is that correct?

A. I believe that is correct.

Q. And have given no other formal notice of default, other than that, the extent, is that true?

A. That's correct.

Q. I will ask you if it is your contention that the placing of the mortgages constitutes a default in the agreement?

Mr. Langroise: We object, if your Honor please, as calling for a conclusion of the witness. The instrument speaks [44] for itself.

The Court: The objection will be sustained.

Q. (By Mr. Hawley): Now, Exhibit 18, the Purchase Agreement which is in evidence, does not specify anything with respect to wool or increase, is that correct?

Mr. Langroise: We object, if your Honor please, the instrument speaks for itself.

The Court: Objection sustained.

Q. (By Mr. Hawley): Now, you spoke and testified in answer to Mr. Langroise's questions in connection with a normal time for replacement in the herd, and I believe you testified that replacements would occur to the summer prior to bringing the bucks in, is that right?



(Testimony of C. A. Sewell.)

A. That's right.

Q. Approximately when in the year?

A. Well, we always put the bucks in about the first ten days of August, and we brought the yearling ewes in in July.

Q. What is the purpose of replacement?

A. To keep your herd up.

Q. Well, is a herd ordinarily depleted?

A. Sheep get old.

Q. Are you talking only about the normal attrition [45] by virtue of death or catastrophe?

A. I am talking about all of the hazards of the sheep business.

Q. What is customary? And you were testifying of the customs, and what customs ordinarily obtain with respect to the sale of old or broken mounted ewes?

Mr. Langroise: I will object as being irrelevant and immaterial.

The Court: He may answer.

Q. (By Mr. Hawley): What is the custom that prevails in the industry with respect to ewes that have gone over the hill?

A. They are taken out of the herd.

Q. How are they taken out?

A. Physically taken out.

Q. What is that?

A. Physically taken out.

Q. By sale?                      A. Surely.



(Testimony of C. A. Sewell.)

Q. What happens in a custom of the industry with respect to lambs?

Mr. Langroise: Object, if your Honor please, as being immaterial for any purpose.

Mr. Hawley: It is very material. The contract, which speaks for itself, is silent as to the [46] matter.

The Court: The man has only testified as to replacement. It may be part of your case, but it is not proper cross-examination.

Mr. Hawley: I will defer to that ruling.

Q. (By Mr. Hawley): This was a Coig Outfit that you sold, I believe you testified it?

Mr. Langroise: I object, if your Honor please, as being improper cross-examination.

The Court: He may answer.

The Witness: That's right.

Q. (By Mr. Hawley): And the Coig Outfit, was that a spread running twenty-five hundred head?

A. When I purchased it, I purchased two thousand three hundred sixty head of ewes.

Q. And you then added to that?

A. Right.

Q. To bring it up to something in excess of four thousand involved in the present purchase?

A. That's right.

Q. Did you make a count of the sheep at the time you sold them to Wickahoney?

Mr. Langroise: Object, if your Honor please,

(Testimony of C. A. Sewell.)

as not being proper cross-examination and not material under the [47] stipulation.

The Court: He may answer.

The Witness: My foreman made the count.

Q. (By Mr. Hawley): You personally didn't make the count?      A. No.

Mr. Hawley: I believe that is all.

Mr. Langroise: No further questions.

The Court: That is all, Mr. Sewell.

(Witness left the stand.)

The Court: Before you call your next witness, Mr. Langroise, we will recess for lunch until 2:00 o'clock this afternoon.

(Whereupon the Court recessed at 12:00 o'clock.) [48].

April 10, 1958—2:00 o'Clock P.M.

The Court: You may proceed, Mr. Langroise.

Mr. Langroise: Call Mr. Sullivan, please.

W. E. SULLIVAN

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please, for the record.

The Witness: W. E. Sullivan.

(Testimony of W. E. Sullivan.)

Direct Examination

By Mr. Langroise:

Q. Your name, please?

A. W. E. Sullivan.

Q. You are one of the attorneys for the defendant in the action?           A. I am.

Mr. Hawley: I will stipulate his qualifications, your Honor.

Q. (By Mr. Langroise): Handing you Plaintiff's Exhibit No. 10, I believe that is a letter which you wrote?           A. It is.

Q. And after the letter was written, what did you do with it?

A. The original letter, on April 24, the day following [49] the date of the letter in 1957, I delivered personally to Mr. Cunningham at the Bank of Idaho in Boise.

Q. Were any copies of that letter sent to anyone else?           A. Yes, there were.

Q. And when, and to whom, and in what manner?

A. They were mailed on April 24, 1957, by regular mail, postage pre-paid. A copy was sent to Orville Wilson, attorney at law at Elko, Nevada; a copy to Charles Sewell at Elko; a copy was mailed to Wickahoney Sheep Company, the defendant, and addressed to the designated office in the Continental Bank Building in Boise; and a copy to Lloyd Haight, attorney at law, at the Con-

(Testimony of W. E. Sullivan.)

tinental Bank Building in Boise; and a copy to Jess Hawley of the firm of Hawley and Hawley, attorneys at law, in the Eastman Building, in Boise.

Q. Mr. Sullivan, at about this time, and prior to the filing of this action by the plaintiff, did you have any conversation with Mr. Hawley concerning the delivery of the possession of the sheep involved in this action? A. Yes.

Q. Do you remember when it was?

A. In the latter part of April, 1957, as I recall—it may have been early in May—I think the end of April.

Q. And where did that take place? [50]

A. In Mr. Hawley's office in the Eastman Building.

Q. And was the conversation as the attorney for the Wickahoney Sheep Company?

A. It was.

Q. And what was said at that time?

A. I asked Mr. Hawley, at that time, if the Wickahoney Sheep Company was going to turn over the property and the sheep to Mr. Sewell.

Q. And what was his answer?

A. Mr. Hawley said, "No, they were not." It was the position of the company that there was no default.

### Cross-Examination

By Mr. Hawley:

Q. Did you make notes of the conversation of April of 1957? A. Nineteen fifty-seven?

(Testimony of W. E. Sullivan.)

Q. Did you make notes of the conversation?

A. No.

Q. You are testifying from your recollection?

A. Yes, sir.

Mr. Hawley: I have no further questions.

Mr. Langroise: That is all.

(The witness left the stand.)

Mr. Langroise: If your Honor please, we would like to call Circiaco Lezamiz, president of the Wickahoney Sheep [51] Company, under cross-examination.

The Court: Very well.

### CIRCIACO LEZAMIZ

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: Circiaco Lezamiz.

The Clerk: Will you spell it, please?

The Witness: C-i-r-c-i-a-c-o L-e-z-a-m-i-z.

### Cross-Examination

By Mr. Langroise:

Q. State your name, please.

A. The name?

Q. Yes, please,                      A. My name?

Q. Yes.                      A. Circiaco Lezamiz.

(Testimony of Circiaco Lezamiz.)

Q. And are you the Lezamiz mentioned as the president of the Wickahoney Sheep Company?

A. Yes, sir.

Q. And were you the manager of the Wickahoney Sheep Company in October of 1955, and on?

A. Manager or president, yes.

Q. Manager and president. Mr. Lezamiz, did the Wickahoney Sheep Company, from October 18, 1955, to the time [52] that the Receiver took possession of the personal property of Wickahoney Sheep Company ever buy any replacements for sheep?

A. No, sir.

Q. Did Wickahoney Sheep Company operate during that time any sheep other than the sheep that were being purchased from Mr. Sewell, and the issue of it?

A. Please?

Q. Did you understand?

A. No, I don't.

Q. Did Wickahoney Sheep Company from the period October 18, 1955, to the time that the Receiver took possession of the personal property, in October of 1957, did they operate any sheep, or run or own any sheep, or have any sheep, other than the sheep they were buying from Sewell?

A. No.

Q. During that time did they have any wool, or sell any wool, other than the wool from the sheep that were being purchased from Mr. Sewell, or the issue of them?

A. During from where?

Q. October 18, 1955, down to the time that the



(Testimony of Circiaco Lezamiz.)

Receiver took possession? A. Yes.

Q. Did they have any wool from any other sheep, other than the sheep being purchased from Sewell? [53]

A. No, sir.

Q. All of the lambs that were sold in 1957 by Wickahoney Sheep Company were the lambs from the sheep being purchased from Sewell?

A. Yes, sir.

Q. At the time that the Receiver, Mr. Blaine Austin, came down to take possession under the Order of the Court of the personal property, including the sheep of Wickahoney Sheep Company, do you remember that? A. Yes.

Q. Did you, at that time, deliver to him, or turn over, all of the sheep that the Wickahoney Sheep Company had? A. Yes.

Q. And all of the personal property?

A. Yes, sir.

Mr. Langroise: You may inquire.

#### Direct Examination

By Mr. Hawley:

Q. Mr. Lezamiz, were there any ewes added to the sheep which were involved in the purchase contract? A. Mr. Hawley, I cannot——

Q. Were there any ewes——

Q. Were there any ewes—— A. Yes.

Q. ——that were added to the band of sheep that came from other sources? [54]

(Testimony of Circiaco Lezamiz.)

A. Any other?            Q. Yes.

A. Twenty-five or thirty head we raised at home.

### Recross-Examination

By Mr. Langroise:

Q. And those you raised at home are from the increase of the Sewell sheep?            A. Yes, sir.

Mr. Langroise: That is all.

(The witness left the stand.)

The Court: Call your next witness, Mr. Langroise.

Mr. Langroise: Call Mr. Blaine Austin.

### BLAINE AUSTIN

a witness called on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Blaine Austin.

### Direct Examination

By Mr. Langroise:

Q. Your name?            A. Blaine Austin.

Q. Mr. Austin, are you the receiver appointed by the Court in connection with the Wickahoney Sheep Company?            A. Yes, sir.

Q. As a result of your appointment by the [55] Court, did you take possession of the personal property of the Wickahoney Sheep Company?

(Testimony of Blaine Austin.)

A. Yes, sir.

Q. When did you do that? A. October 9.

O. Of what year?

A. October 9, 1957—eight or nine—I'm not sure.

Q. And at that time, did you take possession of all the property that you could find at Wickahoney Sheep Company? A. Yes, sir.

Mr. Langroise: May I have the copy of the Receiver's Report?

Mr. Hawley: The Inventory?

The Court: No. 12.

Mr. Langroise: Exhibit 12, thank you.

Q. (By Mr. Langroise): In the Inventory which you returned into the Court as the Receiver's Report, did you list all of the property which you took as a Receiver of the Wickahoney Sheep Company? A. Yes, sir.

Q. Now, Mr. Austin, I wonder if you have your Record here of Sale that you made of any of the property? A. Yes, sir. [56]

Q. Now, with respect to the sheep themselves, I wonder if you would advise us of what you sold in the fall; do you want your Record?

A. Please.

(The witness left the stand to get his records which were in the Court Room.)

Q. (By Mr. Langroise): How many sheep did you take possession of, first—would you like the copy? A. Yes, may I have the Inventory?

(Document handed to the witness.)

(Testimony of Blaine Austin.)

A. I took three thousand one hundred eighty-seven ewes, one hundred small lambs, forty-four bucks, eight work horses, eight saddle horses, one milk cow, and one yearling.

Q. Tell us, what you did, if anything—did you sell the ewes, the lambs, and the bucks?

A. Yes, sir.

Q. When did you sell them, and for what price?

A. On November 3, I sold four hundred forty-one (441) aged ewes at \$13.00 per head.

Q. For a total of how much?

A. Five thousand seven hundred thirty-three dollars (\$5,733.00). I sold one hundred ten (110) small lambs; weight seven thousand seven hundred twenty-five (7,725) pounds at eighteen cents per hundred weight. One thousand three [57] hundred ninety dollars fifty cents (\$1,390.50).

Q. And when was that?

A. That was the same day.

Mr. Hawley: What was the date?

Mr. Langroise: November 3.

Q. (By Mr. Langroise): Now, with respect to the two sales, in your opinion were they the fair market value for those that you sold? A. Yes.

Q. Will you go on?

A. On November 9, I sold two hundred eighty-five (285) old ewes, weight thirty-four thousand three hundred seventy pounds (34,370) at \$7.75 per hundred weight.

Q. For a total?

A. A total amount of two thousand six hundred sixty three dollars sixty-seven cents (\$2,663.67).

(Testimony of Blaine Austin.)

That same date I sold sixteen (16) bucks at \$21.00 per head for a total of—no—eighteen (18) bucks at \$3.00 per head. Sixty-four (64) old ewes at \$10.00 a head.

Q. What was the total for the bucks?

A. Three dollars for the bucks. These items are together—eighteen bucks at \$3.00 per head, that is fifty-four dollars (\$54.00); I sold sixty-four ewes at \$10.00 per head. That check was for six hundred ninety-four dollars [58] (\$694.00).

Q. And was that a fair market value for them at that time, in your opinion? A. Yes, sir.

Q. And next?

A. I sold two thousand three hundred and thirty-four (2,334) ewes at \$21.00, and sixteen (16) bucks and forty-one (41) wethers. The amount was forty-nine thousand eight hundred forty-two dollars (\$19,842.), f.o.b. Wickahoney Ranch.

Q. And, Mr. Austin, on what date was that?

A. That sale was November 24th.

Q. And was that, in your opinion, a fair market value for those? A. Yes, sir.

Q. Mr. Austin, are you familiar, generally, with the operation of sheep—sheep operations?

A. Yes, sir.

Q. And how long have you been?

A. Born and raised with them.

Q. Are you familiar with the operation in Owyhee County of sheep? A. Yes, sir.

Q. And when do they normally lamb in that area, if you know? A. January and February.[59]



(Testimony of Blaine Austin.)

Q. Now, after the ewes lamb, how long does the lamb remain with the mother?

A. You mean the lamb?

Q. Yes, sir.

A. Generally until shipping time.

Q. And is fed, that is with the mother and separated at shipping time?      A. That's right.

Q. Are you familiar, generally, with the replacement of bands of sheep during operations——

A. Yes, sir.

Q. ——that are in that area?      A. Yes, sir.

Q. And what is the practice with respect to replacement?

Mr. Hawley: If the Court please, I will object that there is no proper foundation as to the replacement or in what kind of a situation.

The Court: He may explain what he means.

The Witness: Yearling ewes is the proper replacement.

Q. (By Mr. Langroise): Yearling ewes?

A. That is the rule, generally, ewes—yearling ewes.

Q. Now, during the summer of 1956, say in July or August, are you familiar with the market price of yearling [60] ewes——

A. Yes, sir.

Q. ——in that area?

A. Not particularly in that area, but Idaho.

Q. That would include Owyhee County?

A. Yes, sir.



(Testimony of Blaine Austin.)

Q. And what was the fair market value, in your opinion?

A. Twenty-four dollars or twenty-five dollars per head.

Q. Now, directing your attention to 1957, the year 1957, are you familiar with the fair market value of yearling ewes in Idaho and the area of Owyhee County? A. Yes, sir.

Q. And what would be the fair market value of ewes at that time?

A. Twenty-six dollars was the prevailing price in 1957 for the yearling ewes.

Q. Mr. Austin, I neglected to ask you, with respect to the two hundred eighty-five (285) ewes that were sold on November 9, at seven seventy-five (\$7.75); two thousand six hundred sixty-three dollars sixty-seven cents (\$2,663.67), would that, in your opinion, be the fair market value at that time?

A. Yes, sir.

Q. And I do not know whether I asked you [61] if the sale of eighteen (18) bucks at \$3.00 and sixty-four (64) ewes at \$10.00 was a fair market value at the time they were sold? A. Yes, sir.

Mr. Langroise: That is all, you may inquire.

### Cross-Examination

By Mr. Hawley:

Q. Mr. Austin, the ewes you sold November 3 and November 9, totaling seven hundred twenty-six (726) ewes—— A. Yes, sir.

Q. ——in your opinion, at that time they were

(Testimony of Blaine Austin.)

sold to be practically worthless?      A. No, sir.

Q. You never made that statement?

A. No, sir.

The Clerk: Marked as Defendant's Exhibit No. 20 for identification.

(The document referred to was marked Defendant's Exhibit No. 20 for identification.)

Q. (By Mr. Hawley): Referring to Exhibit No. 20 for identification, did you write that letter to me?      A. Yes, sir.

Mr. Hawley: I would like to offer Defendant's Exhibit No. 20 in evidence.

Mr. Langroise: The only objection, if your [62] Honor please, I don't think it proper in the proceedings.

Mr. Hawley: It's for impeachment.

The Court: It may be admitted for what it is worth.

(The document referred to was marked Defendant's Exhibit No. 20 and was received in evidence.)

Q. (By Mr. Hawley): Now, in connection with the four to six hundred ewes, that you said are broken mouthed, were you able to estimate the age of the ewes?

Mr. Langroise: That is not a correct statement of the letter. The letter should be handed to him.

Mr. Hawley: It is a correct statement of the letter. Will you hand it to the witness, please?

(Testimony of Blaine Austin.)

Q. (By Mr. Hawley): Don't you say in the letter, that there are four hundred to six hundred ewes with broken mouths and old?

A. That's right.

Q. What were the ages?

A. I couldn't tell you.

Q. How do you tell the age of sheep?

A. By mouthing.

Q. Did you mouth them? A. Yes.

Q. And what did you ascertain?

A. Broken mouthed ewes. [63]

Q. And you said you tell the age of them by mouthing; did you have an opinion as to the age?

A. You can't tell after a certain time.

Q. What is the age which, generally, you can't tell how much older they are?

A. There are different opinions, and it differs from the country and conditions.

Q. Under the conditions prevailing on the range, are you familiar? A. Yes, sir.

Q. All right.

A. It would be difficult to tell over a five or six year old.

Q. It would be hard?

A. When it's a solid mouthed.

Q. Once a ewe is five or six years of age, you can't tell how much older they are?

A. Not actually, no.

Q. At that time, did you make an estimate of the age of the four to six hundred ewes?

A. Yes, sir.

(Testimony of Blaine Austin.)

Q. And what did you estimate the ages at?

A. I couldn't estimate after they are solid mouthed ewes. It's practically impossible to estimate the age.

Q. Would you say they were over six years of age? [64]

A. Yes, sir.

Q. Could they have been seven years of age?

A. Yes, sir.

Q. Could they have been eight years of age?

A. Yes, sir.

Mr. Langroise: Objection, if your Honor please, as being improper cross-examination.

The Court: He has answered. It may stand.

Q. (By Mr. Hawley): Would you say they could have been eight years of age?

A. Could have been, yes.

Q. Nine years of age?

A. I won't go that far, Jess, a nine year old ewe—I give up.

Q. At that point they are gone over——

A. Over the hill.

Q. Yes. What was the gross receipts from your Receivership with respect to the liquidation of the Inventory?

A. I think it's sixty-nine thousand—I have it.

Q. Do you have the exact figures?

A. Yes, sir. I can get the exact figures. You have a copy and all of the rest.

Q. I am not certain. I would appreciate your getting the exact figure. [65-66]

A. Now?

Mr. Hawley: Yes, sir.

(Testimony of Blaine Austin.)

(The witness left the stand to get the document in question, in the Court Room.)

Q. (By Mr. Hawley): May I ask what document you are making reference to, Mr. Austin?

A. Sir?

Q. What document are you referring to to refresh your recollection?

A. To my deposit in the bank, and the sales I made in December of hay, the grain, the oats, trucks, pickups, and the different stuff listed.

Q. You don't have a Summary Sheet showing the accounting? A. Right here.

Q. All right. If you would not mind, I hate to consume the time, your Honor, but I would like to get the basic figure in the record.

Mr. Langroise: May I ask a question?

The Court: Yes, you may.

### Voire Dire Examination

By Mr. Langroise:

Q. The last sale that you referred to in December, Mr. Austin, the proceeds of that sale, did you get it? [67]

A. It was turned over to the bank—the First Security Bank.

Q. And it was under mortgage to the First Security Bank? A. Yes, sir.

Q. And the Receiver did not receive any money from that?



(Testimony of Blaine Austin.)

Mr. Hawley: I object, if the Court please, the question calls for a conclusion.

The Court: Are you trying to get a value of the property, Mr. Hawley, at the time this property was alleged to have been turned over?

Mr. Hawley: That is one reason.

The Court: I think you have a lot of property in the receivership. There may be some question.

Mr. Hawley: And the other matter is that this is a lawsuit for damages, and this is something which the Receiver got in his possession, and I want to find out how much he got.

Mr. Langroise: We put in no Proof with respect to anything other than the sheep, Mr. Hawley.

The Court: This Receiver is going to put in a final report of what he received and sold. Now, I don't know what you are trying to get at.

Mr. Hawley: I do have a purpose, your Honor.

The Court: There is a lot of property that [68] has been sold. I believe you claim it was not a part of the original property sold, and some property which has not been sold.

Mr. Hawley: Yes, your Honor, but they are suing for the return of all of the property, or the sum of two hundred twenty-five thousand dollars (\$225,000.00). In connection with the allegation of the complaint——

The Court: It is material so far as the property in the contracts.

Mr. Hawley: That is what I am limiting it to.



(Testimony of Blaine Austin.)

The Court: But you are not.

Mr. Hawley: That is what I meant in the question.

The Court: Let us tie it to that.

### Cross-Examination

(Continued)

By Mr. Hawley:

Q. Mr. Austin, in your figures, will you compute only the property that was in the Purchase Agreement, which will include the sheep?

A. I don't know, was it in——

Q. Handing you what has been marked——

A. I can give you the actual sales and the amount of money.

Q. We want what was involved in the Purchase Agreement.

The Court: If he has the amount that was sold.

Mr. Hawley: In other words, he will itemize it.

The Court: What he did, and what he got.[69]

Q. (By Mr. Hawley): Would you itemize what you sold, what you got for it, when you sold it, and to whom you sold it?      A. Yes, sir.

Q. Just read from your——

A. I can read from the deposit slip.

Q. We have to identify it.

A. I will have to go through it here and—four hundred forty-one (441) aged sheep sold to E. C. Warren of Burley, Idaho, at \$13.00 per head, five thousand seven hundred thirty-three dollars, (\$5,733.00).

(Testimony of Blaine Austin.)

Q. And the date? A. November 3rd.

Q. Proceed.

A. One hundred ten (110) lambs, weighing seven thousand seven hundred twenty-five pounds (7,725) at \$18.00 per hundred weight, one thousand three hundred ninety dollars fifty cents (\$1,390.50), to Golden Moffit.

Q. With respect to the bucks, the lambs, and the sheep you have testified to that. A. Yes.

Q. And exclude the matters you have testified to, and limited to those you have testified about.

A. That is all of the sales I have made.

Q. You have justified to the sale of bucks, [70] lambs, and ewes, haven't you, you have given those figures? A. Yes, sir.

Q. Eliminate those figures and give us the figures from the other items sold, other than what you have just testified to.

A. You want the machinery, hay and grain? That is all I sold, right there.

Q. All right. A. You give you——

Mr. Langroise: As far as the machinery is concerned, and as far as the plaintiff, that was none of the machinery under the Purchase Agreement, and we have put in no Proof.

The Court: I am going to let him testify and determine whether it is material later on.

The Witness: We sold to Mr. Chester Loveland approximately three hundred seventy-two point nine seven (372.97) tons of alfalfa hay, and that was fourteen dollars (\$14.00) per ton. The amount was five

(Testimony of Blaine Austin.)

thousand two twenty-one dollars fifty-eight cents. (\$5,221.58). Approximately one hundred bushels of oats, that is \$720.00. One 1955 Chevrolet 2-ton truck, two thousand dollars (\$2,000.00); one 1951 Chevrolet pickup truck, five hundred dollars (\$500.00); approximately nine hundred bales of straw, at \$1.00 per bale; total sales, nine thousand three forty-one dollars fifty-eight cents (\$9,341.58). [71]

Q. (By Mr. Hawley): That figure added to the figure that you testified to as to the sheep receipts constitutes the total receipts of the Receiver at this time? A. Yes, sir.

Q. And you would have in your possession, you would have in your possession the balance of the Inventory as disclosed in Exhibit 12, except the items you have sold? A. That's right.

Mr. Hawley: That is all.

### Redirect Examination

By Mr. Langroise:

Q. The nine thousand three hundred forty-one dollars fifty-eight cents (\$9,341.58) being the last sale you made. Did the Receiver get the money?

A. No, sir. It was turned over to the First Security Bank of Boise to apply on the loan—on the note—a mortgage of the materials.

Q. On a mortgage of the materials, given by the Wickahoney Sheep Company? A. Yes, sir.

Q. Now, in the culling of sheep, Mr. Austin, do you cull for things other than age?

(Testimony of Blaine Austin.)

A. Oh, yes, very definitely.

Q. What do you cull for? [72]

A. Constitution, quality and condition.

Q. And is that what you did with respect to the sheep after you got possession of them?

A. Yes, sir.

Q. And that was the reason for the culling?

A. Yes, sir.

Mr. Langroise: That is all.

### Recross-Examination

By Mr. Hawley:

Q. And in your culling, you sell and dispose of the sheep culled, is that correct? A. Sir?

Q. It is customary practice when you clean out a herd to sell and dispose of the sheep that you have culled out, is that right? A. That's right.

Q. Now, what is the average loss in bands of sheep, if you know, in that area, from a normal shrinkage in the flock or the band?

Mr. Langroise: We object, if your Honor please, that it is immaterial and incompetent, and not proper cross-examination.

The Court: Objection sustained.

Mr. Hawley: I have no further questions.

Mr. Langroise: That is all, thank you, Mr. Austin. [73]

(The witness left the stand.)

Mr. Langroise: Mr. Clerk, would you mark as a

Plaintiff's Exhibit this Chattel Mortgage that I overlooked this morning?

The Clerk: Marked as Plaintiff's Exhibit No. 21 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 21 for identification.)

Mr. Langroise: We offer that in evidence.

Mr. Hawley: We have no objection to its admission.

The Court: It may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 21 and was received in evidence.)

Mr. Langroise: Now, Counsel, with respect to Plaintiff's Exhibit 3, 4, 5, and 21——

Mr. Hawley: Which are?

Mr. Langroise: Mortgages given by Wickahoney Sheep Company to Continental State Bank, now the Bank of Idaho. It is stipulated that they are the only mortgages received by Continental State Bank from the Wickahoney Sheep Company?

Mr. Elam: Are they set forth——

Mr. Hawley: In the answer?

Mr. Langroise: Yes.

Mr. Hawley: And the answers to the interrogatories?

Mr. Langroise: Yes. [74]

Mr. Hawley: We will so stipulate.

The Court: Very well.

Mr. Langroise: Now, with respect, Mr. Elam and



Mr. Hawley, Exhibit No. 2 of the Plaintiff's is a copy furnished by the Bank under an Order to Produce. It is stipulated that that is the only financial statement by the Wickahoney Sheep Company to the Continental State Bank in connection to any loans which they made to the Wickahoney Sheep Company?

Mr. Elam: That is the only one that was found. That is all we know about.

Mr. Langroise: And you will stipulate that is the only one?

Mr. Elam: To the best of our knowledge, yes.

Mr. Hawley: That was submitted in an interrogatory.

Mr. Langroise: No, on an Order of Production, and that is the only one you could produce?

Mr. Elam: Yes, sir.

Mr. Langroise: We subpoenaed Mr. Miller, duces tecum, to produce photostatic copies of the drafts that went through the Bank, and by the Bank applied to any debt of Wickahoney Sheep Company. Mr. Miller advised that they have the film but do not have the enlarger set up here. However, he advises that he is having one of their employees view these. I have talked with Mr. Elam to see whether this is correct. What they find on those, from viewing, you will [75] stipulate to?

Mr. Elam: The subpoena was not served until this morning, and it would take four or five days to get the material out of Salt Lake City, however, we did say we would get the view on the micro-film and



would submit such data as appeared on the drafts.

Mr. Hawley: What about photostats?

Mr. Elam: They cannot get them for four or five days.

Mr. Langroise: When they furnish that, and it is put in this afternoon, with that, I believe the Plaintiff rests.

The Court: Is that satisfactory, that when you get the information it may be put in?

Mr. Elam: Yes, your Honor. We are not trying to withhold anything.

The Court: With that understanding, the Plaintiff rests?

Mr. Langroise: That is correct, your Honor.

Mr. Hawley: Your Honor, at this time I would like to move for a dismissal of the lawsuit of the Plaintiff's upon the grounds and for the reason that the Plaintiff has failed, at this time, to submit any evidence at all, and not a single bit of evidence in connection with the expenses that would result from operating four thousand sheep—ewes and rams [76]—or the subject matter of the Purchase Contract which is in litigation. They have sued for a return of the possession of all the personal property, or the sum of two hundred twenty-five thousand dollars (\$225,000.00), which they have alleged to be the reasonable value, or the value of the sheep and the property. And in connection with the general rule of damages for breach of contract, it is a part of the Plaintiff's case, not only to show the value of their damage, but also to show, in a situation of this nature, the cost to them in maintaining, and keeping,

grazing, and caring for a herd of sheep. I refer to the Court to a Supplemental Memorandum which I have filed in the case. In the lawsuit, without bothering to paraphrase or quote from any of the decisions, and I might mention that in Idaho the case of Molineau vs. the Twin Falls Canal Company makes it clear that it is the obligation of the Plaintiff to establish——

The Court: This being a Court case, your motion will be denied.

Mr. Elam: It is understood that the motion is made on behalf of the Bank, as well as Wickahoney Sheep Company. Mr. Hawley is appearing as attorney for both.

The Court: The motion will be denied as far as the Bank is concerned, too. We will recess for ten minutes, gentlemen.

(Whereupon the Court recessed for ten minutes.) [77]

The Court: You may proceed, Mr. Hawley.

Mr. Hawley: Call Mr. Lezamiz, your Honor.

The Court: Very well.

### CIRCIACO LEZAMIZ

a witness previously having testified in this case, was recalled for further examination.

### Direct Examination

By Mr. Hawley:

Q. Mr. Lezamiz, you have been previously sworn in this case.           A. Yes.

(Testimony of Circiaco Lezamiz.)

Q. Will you take the stand? You have been previously identified as President of Wickahoney Sheep Company since it started in 1955? A. Correct.

Q. Now, Mr. Lezamiz, what is your background with respect to sheep operations?

A. What is my background?

Q. What is your experience?

A. It's twenty-four years working in the sheep.

Q. Will you speak up?

A. My experience in the sheep is working with the sheep twenty-four years.

Q. And has that been in the State of Idaho?

A. Yes, sir. [78]

Q. And with what outfit were you first involved?

A. Bruneau Sheep Company.

Q. And how long were you with the Bruneau Sheep Company? A. Sixteen years.

Q. And is that in the Bruneau Area of Idaho?

A. Owyhee County, yes.

Q. And when did you terminate your employment with Bruneau Sheep Company?

A. 1955.

Q. And at or about what time did you first become aware of the Sewell Spread?

A. Some time in the year 1955—July or August.

Q. And would you state whether or not, at that time, you made any contact with Mr. Swell, or he made contact with you?

A. No, I made contact with Mr. Sewell.

Q. Where was that?

(Testimony of Circiaco Lezamiz.)

A. At his ranch, the Blue Creek Ranch.

Q. Blue Creek? A. Right—ranch.

Q. And did he have the sheep and the spread, and the equipment that are involved in the lawsuit at Blue Creek at that time?

A. At that time, no, sir. [79]

Q. Did you have any discussion with him looking, or negotiations looking toward acquiring his spread?

Mr. Langroise: Object, if your Honor please, it is immaterial and irrelevant.

The Court: He may answer "yes" or "no."

The Witness: If—

The Court: Answer the question "yes" or "no."

The Witness: I don't understand, please, you repeat?

Q. (By Mr. Hawley): At that time, did you have any talk with Mr. Sewell, looking toward the possible purchase of his outfit? A. Yes.

Q. And can you state whether or not he was or was not interested in selling?

A. Well, he give me the answer—he say, "I'll let you know a day or so later."

Q. Subsequently, did he get in touch with you?

A. I went to see him about two or three days later and he give me the answer then.

Q. What was the answer? A. "Yes."

Q. Now, prior to entering the agreement, which is in evidence, did you make any inspection of the herd?

(Testimony of Circiaco Lezamiz.)

A. I looked all that sheep—how shape is the sheep, [80] how shape the camp equipment.

Q. Did you inspect the sheep individually?

A. What you mean, individually?

Q. One by one. A. No, sir.

Q. Did you mouth the sheep? A. No, sir.

Q. Now, did you have any discussion with Mr. Sewell, and if you did, state when and where it took place with respect to the ages of the sheep?

A. Yes.

Q. And where did the discussion take place?

A. Right in his place in Blue Creek Ranch.

Q. And approximately what date?

A. Oh, sometime in about the month of September in 1955.

Q. And what was said between you at that time?

Mr. Langroise: We object, if your Honor please, it is irrelevant and immaterial, and incompetent for any purpose. The contract is the best evidence.

Mr. Hawley: If your Honor please, this goes to the matter of the affirmative defense and the Cross Complaint, and the Court is entitled to hear all of the Defendant's facts and the circumstances, and the inducement and the representation, if any, that were made. [81]

The Court: I am going to reserve the ruling and let him testify.

Mr. Langroise: My objection may go to all of this?

The Court: Yes, it may.

(Testimony of Circiaco Lezamiz.)

Q. (By Mr. Hawley): Mr. Lezamiz, will you state what was said to you by Mr. Sewell at that time?

A. What Mr. Sewell said at that time, about what?

Q. The last question.

A. The age of the sheep?

Q. Yes.

A. From yearling to five years old.

Q. Now, do you know where Mr. Sewell acquired the spread originally?      A. Yes, sir.

Q. And what spread was that?

A. What area—where he run the sheep?

Q. No, from whom did he acquire the operation?

A. To who?

Q. From whom did he buy it?

A. Mr. Sewell, from who he got the outfit?

Q. Yes.

A. From Coig.

Q. Is that C-O-I-G?

A. I think so. [82]

Q. And did you have any discussion with Mr. Sewell with respect to range for the sheep?

Mr. Langroise: May I interrupt? I would like, for the minute, to ask one or two questions in aid of a further objection.

The Court: You may do so.



(Testimony of Circiaco Lezamiz.)

Voire Dire Examination

By Mr. Langroise:

Q. Mr. Lezamiz, was a contract entered into with respect to a range or the purchase of land, a written agreement by Wickahoney? You understand?

A. No, I don't.

Q. Was there a contract between Wickahoney Sheep Company and Mr. Sewell and his wife, separate and distinct from the purchase of the contract of the sheep; and was there any contract?

A. By range?

Q. Yes. And the leasing of land and the option to purchase? A. Yes, there was.

Q. Mr. Lezamiz, that contract, after it was entered into by the Wickahoney Sheep Company, was it assigned by the Wickahoney Sheep Company to the Ruby Company?

Mr. Hawley: I object, if the Court please, that it is immaterial, and irrelevant, and not within any of the issues [83] of the case.

Mr. Langroise: The reason for the question, if your Honor please, there was an assignment and we would like a copy of the assignment, and if the Wickahoney Sheep Company is not interested, Wickahoney are not the real parties in interest.

The Court: He may answer the question, if he can answer it. Was it assigned to the Ruby Company?

The Witness: No, never as far as I am con-

(Testimony of Circiaco Lezamiz.)

cerned. Never a contract between Ruby Company and Wickahoney Sheep Company.

Q. (By Mr. Langroise): Do you know, Mr. Lezamiz, did Mr. Haight tell you that there was an assignment of that to the Ruby Company?

Mr. Hawley: I object, it is immaterial and irrelevant.

The Court: I don't know whether it is. He may answer.

The Witness: No.

Mr. Langroise: Mr. Hawley, did you not contend that there was an assignment of the other contract to the Ruby Company? Let me ask you——

Mr. Hawley: I am going to make the objection to the question; that is as far as I am willing to go.

The Court: If it is a fact, the Court cannot [84] rule unless he knows the fact. The Court understood there was an assignment, and a lease in the contract.

Mr. Hawley: They are in evidence.

The Court: The Court wants to know when, if it was.

Mr. Hawley: I don't think that is a proper question of this witness.

The Court: If we are going into things extraneous, the Court should know the facts before it can rule, that is the whole point.

Mr. Hawley: Would you mark this?

The Clerk: Marked as Defendant's Exhibit 22.

(The document referred to was marked Defendant's Exhibit No. 22 for identification.)

(Testimony of Circiaco Lezamiz.)

Mr. Hawley: In the interest of the observation that the Court would like to have the matter resolved, I feel with this witness it is immaterial. I offer the assignment, Defendant's Exhibit No. 22.

Mr. Langroise: We have no objection, if your Honor please.

The Court: Exhibit 22 is admitted.

(The document referred to was marked Defendant's Exhibit No. 22 and was received in evidence.)

Mr. Hawley: And, at this time, in view of the fact that the Assignment is in evidence, pursuant to the request of Mr. Langroise, I would reoffer—would you hand Exhibit [85] No. 17 to the witness?

#### Direct Examination

(Continued)

By Mr. Hawley:

Q. Is that the land lease to which you had reference in your testimony, would you check that and determine whether your signature appears at the end of that? A. Yes, this is my signature.

Q. And is that the Land Lease that went with this deal that you have talked about?

A. I think it is.

Mr. Hawley: We reoffer Defendant's Exhibit 17.

Mr. Langroise: To which we object, that it is irrelevant and incompetent, and it appears that the Exhibit, which is Exhibit 22, that the Wickahoney Sheep Company no longer has any interest in the

(Testimony of Circiaco Lezamiz.)

contract, and there was no reservation of any right by reason of the assignment by the Wickahoney Company to the Ruby Company, and in those conditions, they are not the real party and interest.

The Court: I am going to admit the Exhibit for the purpose of tying it in with the Assignment. As far as any interrogation on the question you started out on, Mr. Hawley, I wonder what the question has to do with the lawsuit. The lease belongs to the Ruby Company.

Mr. Hawley: The complaint of the Cross Complaint is directed to the misrepresentations of the Plaintiff Sewell and [86] Wilson as to the ages of the sheep, and the matter of the grazing rights, and the base land being adequate to sustain and hold the sheep which are the subject of the Purchase Contract, and the Court is entitled to hear all of the relevant facts and circumstances relating to the question.

The Court: I am going to hear you. I have some doubt about it. I am going to reserve my ruling.

Q. (By Mr. Hawley): Mr. Lezamiz, referring back to the conversations you had with Mr. Sewell, what was said by him with respect to range rights?

Mr. Langroise: Our objections run to all of this, if your Honor please.

The Court: The Court will reserve the ruling.

Mr. Langroise: May it be understood, if your Honor please, that the objection may run to all of this?

The Court: Yes, it may.

(Testimony of Circiaco Lezamiz.)

Q. (By Mr. Hawley): You may answer.

A. You was asked me what Mr. Sewell said?

Q. Yes. A. When?

Q. When did you first talk to him about it?

A. He said he was going to give us grazing rights—the sheep and the right he got—Clog's outfit, or whatever [87] you call it.

Q. And do you know how many sheep the Coig Outfit could run?

A. Mr. Sewell gave me it—forty-five hundred ewes' rights.

Q. Now in connection with those rights, did Mr. Sewell make any statement to you in connection with additional A U M's? A. Later on, he was.

Q. And what statement did he make to you, and when was this?

A. I think it was in October, 1955, I don't remember just exactly the days between the fifth to the tenth, I believe, when we closed the deal.

Q. And what was the conversation?

A. About the rights?

Q. Yes.

A. Well, he was telling us the Coig's Corporation Rights and I was telling—there would not be enough territory to run all the forty-five hundred sheep.

Q. In connection with there not being enough—Mr. Langroise: Could he finish the answers?

Q. (By Mr. Hawley): Have you finished?

A. Not quite. [88]

Q. Then finish.

A. I was complaining that we don't have enough



(Testimony of Circiaco Lezamiz.)

grass to run the forty-five hundred sheep, and he told me that he can make some kind of a deal with us to put in five hundred steers in Bull Creek and give us some rights in his range.

Q. Now, with respect to the property which was leased in accordance with Exhibit No. 17, was that enough grass to run the four thousand head of sheep on for the year, was it enough range?

A. Well, we got enough rights, but the range—we wanted more—more grass.

Q. Now, did you have enough grass with grazing rights and the leased ground to run four thousand sheep on a year 'round operation?

Mr. Langroise: To which we object, if your Honor please, that the representations that the witness has said they had enough.

The Court: The objection is sustained. They had enough, but wanted more, is what he said.

Mr. Langroise: That is correct.

Q. (By Mr. Hawley): Did Mr. Sewell say anything to you at that time in connection with giving you additional grass, grazing rights, or base land?

Mr. Langroise: I object as being leading. [89]

The Court: Objection sustained.

Q. (By Mr. Hawley): Did Mr. Sewell make any statement to you at that time in connection with what he would do?

A. He says he will sell to us more rights so we can have sufficient, you know, enough grass to run all four thousand sheep. Yes.



(Testimony of Circiaco Lezamiz.)

Q. Did he ever provide you with that additional land or grazing rights?

A. I don't follow you quite, where you go, Mr. Hawley.

Q. Well, I believe you just testified that he said you would have enough to run four thousand sheep on.

The Court: The witness said, that he would sell the rights.

The Witness: He tell us that he would sell us eight hundred A U M's, and said what was coming from the Coig Corporation.

Q. (By Mr. Hawley): And the Coig lands are described in Exhibit 17, which is the lease, is that true?

Mr. Langroise: The Exhibit speaks for itself, your Honor.

The Court: He may answer that question. I don't know whether it describes the lands or not. [90]

Mr. Langroise: I didn't hear you, your Honor.

The Court: It probably describes the land. He may answer the question, if he knows whether that is the land.

The Witness: I can give you the answer if I can hear a question.

Mr. Hawley: Will you read the question, please?

(The Reporter read the question as follows:

“Question: And the Coig lands are described in Exhibit 17, which is the lease, is that true?”)

Q. (By Mr. Hawley): Did you answer the——

(Testimony of Circiaco Lezamiz.)

A. Not quite. Seventeen is what, please? You asked me the question?

Q. I will ask you again. I just showed you Exhibit 17, the Lease of the Land.

A. That's right.

Q. Is that the land you referred to as the Coig Lands?      A. Right.

Q. Now, with respect to the eight hundred A U M's, you are familiar, generally, with the grazing laws and the grazing operations?

A. Yes, I am.

Q. In connection with the eight hundred A U M's, can you tell us whether or not this property was necessary to support the eight hundred A U M's on the public domain? [91]

A. It's necessary, and I said there was enough rights, but we wanted more grass.

Q. And when you say, "there were enough rights——"      A. Yes.

Q. "——are rights of any use to a sheep man unless they are attached to base lands?"

Mr. Langroise: Objection, if your Honor please, as being irrelevant and immaterial for any purpose.

Mr. Hawley: I think it is material. We are getting into a subject that needs explanation.

The Witness: I can understand some what you asked me, Mr. Hawley, can you repeat the question for me, please?

Q. (By Mr. Hawley): You previously testified: "Sewell said he would sell you eight hundred A U M's of rights.      A. That's right.

(Testimony of Circiaco Lezamiz.)

Q. Now, rights in your experience and knowledge and background as a sheep man, rights cannot stand alone, can they; they have to be attached to base lands?

A. He got the base land where the eight hundred A U M's—

Q. I didn't hear that.

A. I did said he got the eight hundred A U M's with the base land.

Q. And what was that base land? [92]

Mr. Langroise: May I ask a question in aid of an objection?

The Court: Yes, you may.

#### Voire Dire Examination

By Mr. Langroise:

Q. Mr. Lezamiz, was a memorandum agreement entered into in connection with the eight hundred A U M's, was there an agreement signed?

A. Yes, sir. There was a signed agreement between us.

Mr. Langroise: Would you produce the original, please?

Mr. Hawley: Yes. I will offer it as our exhibit.

The Clerk: Marked as Defendant's Exhibit 23 for identification.

(The document referred to was marked Defendant's Exhibit No. 23 for identification.)

Mr. Langroise: I object to any testimony on it,

(Testimony of Circiaco Lezamiz.)

if your Honor please, the agreement will speak for itself.

The Court: It is not in evidence yet.

Mr. Hawley: We will offer Exhibit 23 into evidence.

Mr. Langroise: We have no objection, other than the fact that it is irrelevant and immaterial, and the proper parties are not involved; other than we have no objection.

The Court: It may be admitted with that understanding. [93]

(The document referred to was marked Defendant's Exhibit No. 23 and was received in evidence.)

Direct Examination  
(Continued)

By Mr. Hawley:

Q. Handing you Defendant's Exhibit No. 22, can you state whether that is the agreement which has been referred to with respect to transferring the eight hundred A U M's?

A. September 17, I thought we was talking about that which you show—that Assignment—the Agreement—this is different, this is 23.

Q. That is Exhibit 23. Now, Mr. Lezamiz, I was asking you if an agreement was signed in connection with the eight hundred A U M's. That Exhibit has been admitted, and I ask you if that is the agreement you referred to as having been executed, or signed, by the parties?

(Testimony of Circiaco Lezamiz.)

A. I see my signature here, right.

Q. That is not a——

A. It's my signature—I don't know——

Q. I didn't get the answer.

A. The signature is mine, yes.

Q. Now, referring just to Exhibit 17, which is the Lease of the Lands which you say are the Coig Lands, was there any summer range in that?

Mr. Langroise: To which we object, your Honor. The instrument will speak for itself. [94]

The Court: Objection sustained.

Mr. Hawley: The instrument describes the land, but does not mention if it is summer or winter range.

The Court: He may answer the question. Whether there was or was not.

The Witness: You were asking about the eight hundred A U M's, or the whole land?

Q. (By Mr. Hawley): Was there sufficient summer range to hold the four thousand sheep that are the subject matter of the contract?

Mr. Langroise: I object that the witness has testified that there was some.

Mr. Hawley: He answered—he said there was some, and I want to know how much.

Mr. Langroise: He testified that they had enough for the four thousand, and all he wanted was the addition.

The Court: He may answer.

The Witness: If there was enough summer range for the four thousand, that is what you asked me?

(Testimony of Circiaco Lezamiz.)

Q. (By Mr. Hawley): Yes, in the original Lease, Exhibit 17.

A. Well, never is enough—like I said a while ago, we wanted more.

Q. Did you, in fact, get additional summer range from Mr. Sewell? [95]      A. From this lease?

Q. No. Did you, in fact, get additional summer range from Mr. Sewell, over and above what is described in Exhibit 17, the Lease?

A. Besides that?

Q. Yes.      A. No.

Q. Did you ever lease any grass from him, or grazing rights?

A. Oh, yes sir. Yes, we did.

Q. When was that?

Mr. Langroise: Object, if your Honor please, as being incompetent, irrelevant and immaterial.

The Court: Objection sustained.

The Witness: May I answer the question?

Mr. Hawley: No. The objection was sustained, you cannot answer that.

The Court: Are you putting in Exhibit 23, Mr. Hawley, or do you want to put it in?

Mr. Hawley: That Agreement, Defendant's Exhibit No. 23, recites: "Whereas it is contemplated by the parties that additional grazing rights shall be transferred from Sewells to Wickahoney Sheep Company, said grazing rights to be in addition to those covered by said Lease and Option." Can you state, whether in fact, additional rights were [96]



(Testimony of Circiaco Lezamiz.)

transferred to Wickahoney Sheep Company by Mr. Sewell?

Mr. Langroise: We object, if your Honor please, that it is irrelevant, immaterial, incompetent, and the Agreement, Exhibit 23, has a date of the 18th of October, 1955; some two months prior to the purchase contract, the subject matter of this suit.

Mr. Hawley: If the Court please, perhaps the Court should read Defendant's Exhibit 23.

The Court: You better put it in evidence. It has not been offered yet.

Mr. Hawley: I offer it, it is not marked yet.

The Court: It may be admitted.

(The document referred to was marked Defendant's Exhibit No. 23 and was received in evidence.)

Mr. Hawley: The instrument contemplates affirmative action on the parties of the Agreement. When I asked the question—in regard to the last question—in fact, were any additional rights transferred pursuant to the Agreement, it is material, and goes to the question of misrepresentation in the lawsuit, which is the matter of the cross complaint of the lawsuit.

Mr. Langroise: The only misrepresentation we have heard, is from Counsel, and not the witness, and he has not been sworn yet.

The Court: It does not go to the representation or [97] fraud. The objection will be sustained.

Q. (By Mr. Hawley): Now, referring back to

(Testimony of Circiaco Lezamiz.)

your examination of the herd, after you went into possession, did you ever dispose of any of the ewes—sell any of the ewes?

A. We bought the outfit in '55, and in the year '56—in the fall, we did sell some old ewes.

Q. Did you sell any ewes in the spring of '56?

A. Spring of '56; no, sir.

Q. In the fall, you said? A. Right.

Q. Did you sell any ewes later?

A. Later in when?

Q. After the fall of '56.

A. No. We sold only ewes once—just once, in the fall.

Q. And do you recall approximately how many were sold?

A. Two hundred six, if I remember right.

Q. How do you tell the age of the ewes?

A. By look at the mouth—I look in the mouth.

Q. With respect to the two hundred ewes, could you state whether or not you made an examination of them prior to selling? A. Yes, I will. [98]

Q. And did you mouth them?

A. Yes, I did.

Q. And will you state what you observed as to the age of those ewes?

A. Well, there was some of it broken mouthed, and some of it was ruptured and blue bags.

Q. Now, does rupture and blue bags have anything to do with age? A. No, sir.

Q. How about a broken mouth condition?

A. I say there was some broken mouth.

(Testimony of Circiaco Lezamiz.)

Q. And with respect to those two hundred ewes, were you able to make any determination as to their age at that time?

A. Yes, I think so. Some of it was the old sheep and was sold because of the rupture, and the blue bags. Because to the broken mouth, I can't say how old was the ewes. I'm not certain enough to say how old is the ewes.

Q. Did you make any observation of the age of the broken mouthed ewes?

Mr. Langroise: The witness testified he could not tell.

The Witness: Still, I repeat, at the time the ewe is broken mouthed, could be five, could be six, could be seven, could be eight; I don't know how old because they was [99] broken mouthed—just broken mouthed.

Q. (By Mr. Hawley): Have you ever made any statement to anyone in connection with the age of those two hundred sheep.

A. Given a statement to anyone?

Q. Yes. A. To you.

Q. Was anybody else there?

Mr. Langroise: I don't think this is proper direct examination, if Your Honor please.

Mr. Hawley: I am just determining, your Honor, whether the witness——

The Court: Are you trying to impeach your own witness?

Mr. Hawley: Well, I may ask that he be a hostile

(Testimony of Circiaco Lezamiz.)

witness. You took the deposition, Mr. Langroise, and had him in your office.

The Court: He may answer. Was anyone in there?

Q. (By Mr. Hawley): Was there anyone else present when you were talking to me?

A. Mr. Lloyd Haight was there.

Q. Do you recall making any statement that at least one hundred of the sheep were eight years old or better?

Mr. Langroise: Objection, if your Honor please, as [100] improper direct examination.

The Court: He may answer.

The Witness: Still, I repeat, eight years old or older—like I said—maybe there was five year old or two years old. I don't know, Mr. Hawley, **how old** the sheep was. There was two hundred sheep with broken mouths. I can't give you the answer of how old they were.

Q. And you didn't make any statement as to the age of one hundred ewes when you were discussing——

A. If I tell you the age?

Q. Yes.

A. Maybe I tell you there was six or eight, or maybe older, and that is the statement I give to you.

Q. With respect to the eight hundred A U M's, referred to in Exhibit 23, do you know what base property those rights were originally attached to?

A. I think so.

Q. And what base property?

Mr. Langroise: We object, if your Honor please,

(Testimony of Circiaco Lezamiz.)

as being immaterial, and irrelevant, and incompetent.

The Court: He may answer.

The Witness: This base come on a big hill out there, from Nit Creek. [101]

Q. (By Mr. Hawley): Is that N-I-T?

A. I don't know—I think so.

Q. And do you know who owned the Bull Creek and the Nit Creek property, of your own knowledge? A. At that time, yes.

Q. Who did? A. Mr. Sewell.

Q. Now, you recall talking with me yesterday afternoon, don't you, in my office?

A. Yes, sir.

Q. And with Mr. Haight? A. Right.

Q. And Mr. Richard Anderson? A. Right.

Q. And, do you recall at that time and place, making any statement to the effect that the lands that you acquired, plus the 800 A U M's, were insufficient to hold and carry those four thousand ewes without getting more grass?

Mr. Langroise: To which we object, it is hearsay, if your Honor please.

The Court: Objection sustained.

Mr. Hawley: If your Honor please, I am actually laying a foundation for the impeachment purposes.

The Court: You cannot lay a foundation [102] for impeachment, Mr. Hawley, you can lay a foundation for a hostile witness. You are not laying a



(Testimony of Circiaco Lezamiz.)

proper foundation as far as a hostile witness is concerned.

Q. (By Mr. Hawley): Is there any difference, in your opinion, as to right and actual grass to graze sheep on?

A. Is there—is any difference between rights and the grass? Right don't make the ewes.

Q. And do you know, as a sheep man for the past twenty-four years, whether Taylor Grazing Rights have to have base lands or grass to attach to?

A. I don't follow you, Mr. Hawley, quite.

Q. Is that because you don't want to?

A. No. You go a little too high-class for me to answer.

Q. I will re-word the question.

A. All right.

Q. Grazing rights—Taylor Grazing Rights—

A U M's— A. Yes.

Q. —without grass or base land to attach to those rights, do they mean anything?

A. If the right mean anything?

Q. Without grass or base land?

A. Well, more or less the rights have grass—but never enough—never is too much. [103]

Q. Did you rent any grazing land from Mr. Sewell in the summer of 1956?

A. Yes, I did.

Q. Did you pay him for that? A. Yes.

The Clerk: Marked as Defendant's Exhibit No. 24 for identification.



(Testimony of Circiaco Lezamiz.)

(The document referred to was marked Defendant's Exhibit 24 for identification.)

Q. (By Mr. Hawley): Handing you what has been marked Defendant's Exhibit No. 24 for identification, is that, is that the payment to Sewell that you referred to? A. Yes, sir.

Q. Would you turn it over and see if is endorsed?

Mr. Langroise: It will speak for itself.

The Witness: Who endorsed, who, myself or somebody else—on the back, by him.

Q. (By Mr. Hawley): No, I asked you if it was endorsed. Is your answer "yes or no"?

A. Yes, it is.

Q. Now, in connection with the grass land that you rented from Sewell, can you state whether or not you ran Wickahoney Sheep on that grass? [104]

Mr. Langroise: We object, if your Honor please, it is immaterial, irrelevant, and incompetent, as far as the issues are concerned.

The Court: I think it is, too.

The Witness: If there was Wickahoney Sheep Company in this grass?

Q. (By Mr. Hawley): That is what I asked you. A. Yes, there was.

Q. Do you know how many head of sheep you ran on the grass, and for what period of time?

A. The check shows the sheep was——

Q. I am just asking you if you know.

A. Yes. I think so.

(Testimony of Circiaco Lezamiz.)

Q. Well, will you answer it?

A. Like the check says, there was fifty-two hundred and twenty days feed, is what I paid. I was paying so much for the days.

Q. Fifty-two hundred, or fifty-two thousand?

A. Excuse me, fifty-two thousand two hundred twenty-five days.

Q. How many sheep?

A. I don't remember now how many sheep. There was—there was a price of a cent and a half a day.

Q. And by arithmetic, you could get the number of [105] sheep out of that; for what period of time?

A. Oh, I think part of it in June and July.

Q. 1956? A. Right.

Mr. Hawley: Thank you. You may inquire.

### Cross-Examination

By Mr. Langroise:

Q. Mr. Lezamiz, handing you what is marked Defendant's Exhibit 23, that paper there——

A. Yes.

Q. ——do you know who wrote it, who drew it up? A. I think so.

Q. Who? A. Mr. Lloyd Haight.

Mr. Langroise: Without waiving our right as to the materiality, we would like to inquire as to some other things.

Q. (By Mr. Langroise): In Defendant's Ex-

(Testimony of Circiaco Lezamiz.)

hibit No. 23, the mention is made of a Mr. Harley McDowell. Certain determinations to be made.

A. You says that there was made out with Harley McDowell?

Q. No. In the Agreement, they mention in the wording something about Harley McDowell.

A. Oh, we put Harley McDowell——

Mr. Hawley: Is that a question or a statement?  
I [106] will object unless it is a question.

The Court: If the Exhibit states that, he can state whether it is a fact.

Mr. Hawley: I will object on the ground that the Exhibit speaks for itself.

Q. (By Mr. Langroise): Who was Harley McDowell?

A. He was the guy that priced the eight hundred A U M's from Sewell to Wickahoney Sheep Company.

Q. And is the one referred to in the agreement?

A. Right.

Q. And did you subsequently see, on November 23, 1955, the report of Harley McDowell?

A. Yes.

Mr. Langroise: That may be marked?

The Clerk: Marked Plaintiff's Exhibit No. 25 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 25 for identification.)

Q. (By Mr. Langroise): Handing you Plaintiff's Exhibit No. 25 marked for the purposes of

(Testimony of Circiaco Lezamiz.)

identification, I will ask you whether or not that is the report from Mr. McDowell that the Wickahoney Sheep Company received, and Mr. Sewell, with respect to Defendant's Exhibit 23?

A. Yes, sir. [107]

Mr. Langroise: We offer in evidence Plaintiff's Exhibit No. 25.

Mr. Hawley: We have no objection to the admission of the Exhibit.

The Court: Exhibit 25 may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 25 and was received in evidence.)

The Clerk: Marked as Plaintiff's Exhibit No. 26 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 26 for identification.)

Q. (By Mr. Langroise): Handing you what has been marked Plaintiff's Exhibit No. 26 for identification, I will ask you if you know what that is?

A. I think I know what this is.

Mr. Langroise: We offer in evidence Plaintiff's Exhibit No. 26.

Mr. Hawley: I don't believe he identified what it is.

The Court: He said he believed he knew.

Q. (By Mr. Langroise): Mr. Lezamiz, tell us what it is, if you know.

(Testimony of Circiaco Lezamiz.)

A. Well, it says pretty plain, the Transfer Rights in the grazing from Mr. Sewell's Rights to Wickahoney Sheep [108] Company.

Q. Mr. who?

A. From Charlie Sewell, or Mr. Sewell, or whatever you call him.

Mr. Langroise: We now offer it.

Mr. Hawley: I have no objection.

The Court: It may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 26 and was received in evidence.)

Q. (By Mr. Langroise): You were asked about Nit Creek Ranch? A. Yes, sir, Nit Creek.

Q. That was not a part of the Coig property, was it? A. No, never was.

Q. No. That was another operation of Mr. Sewell's? A. Right.

Q. Mr. Lezamiz—— A. Right.

Q. ——did you ever say anything to Mr. Sewell, the Plaintiff, or his wife, or to Mr. Wilson, that the sheep bought by Wickahoney under the contract, or being bought under the contract by Wickahoney from Mr. Sewell, were not as you understood them to be?

Mr. Hawley: I object on the grounds it is argumentative, as he assumes them to be, is an argumentative question. [109]

The Court: He may answer "yes or no."



(Testimony of Circiaco Lezamiz.)

The Witness: Well, I answer the question. You repeat the question for me, please, Mr. Langroise?

Q. (By Mr. Langroise): Mr. Lezamiz, the sheep that were purchased by Wickahoney under the contract, the agreement to purchase from Mr. Sewell, and delivered to Wickahoney Sheep Company on October 18, 1955—

A. October 15, if I remember right, 1955, yes.

Q. And you think October 15?

A. I imagine, I don't know sure—between the 15th and 18th.

Q. Between the 15th and 18th of October, 1955?

A. Right.

Q. And I believe prior to the time you took a delivery of all of the property, you had looked at all of the property and the sheep? A. Yes.

Q. And looked at the camps? A. Yes.

Q. And you had the sheep, or Wickahoney had the sheep in its possession from somewhere between October 15, 1955, continuously thereafter until December 15, 1955; you understand me?

A. If we have the sheep until December? [110]

Q. Well, you signed the contract, the Purchase Agreement on December 15? A. Right.

Q. And from the time in October, the 15th or 18th, to December 15th, when you signed the Agreement, the sheep were all in the possession of the Wickahoney Company? A. Yes, sir.

Q. And were being run by the Wickahoney Sheep Company? A. Yes, sir.

Q. And were the sheep as you saw them before



(Testimony of Circiaco Lezamiz.)

they were delivered to you, and after, were they the sheep that you understood you were purchasing?

A. Purchasing, what is that?

Q. Agreeing to buy by the Wickahoney Company from Mr. Sewell. A. Yes.

Q. Those that you had agreed to buy?

A. Yes.

Q. And did you ever, at any time, and up to and including the present time, ever say anything to Mr. Sewell, his wife, or Mr. Wilson, that the sheep that Wickahoney got from Mr. Sewell were not the sheep that you purchased and just as you had inspected them?

Mr. Hawley: I will object on the grounds that it is [111] argumentative and assumes facts not in evidence; what did he inspect?

The Court: That is true. I don't believe the man has testified that he didn't get the sheep that he bought.

Mr. Langroise: That is correct. I was following it through to tie it in.

The Court: The objection will be sustained.

Q. (By Mr. Langroise): Mr. Lezamiz, during the year 1957, or the latter part of '56, was Wickahoney Sheep Company occupying what is known as the Nit Creek Ranch? A. Yes, sir.

Q. And during that period, were they, the Wickahoney Sheep Company, using the eight hundred A U M's which were transferred or acquired by the Wickahoney Sheep Company and represented by

(Testimony of Circiaco Lezamiz.)

Plaintiff's Exhibit No. 26? Perhaps you don't understand.

A. You says from the Wickahoney Sheep Company?

Q. I believe you said you got eight hundred A U M's from Mr. Sewell in addition to what you bought originally.

A. That's right.

Q. And did Wickahoney Sheep Company use those eight hundred A U M's?

A. That's right. [112]

Q. And continued to use them, and were using them until the time the Receiver took possession of the Wickahoney Sheep Company?

A. Yes, sir.

Q. Did Wickahoney Sheep Company ever pay to Charles Sewell, or his wife, or Mr. Wilson, any of the Plaintiffs, anything for the eight hundred A U M's?

A. Not that I know.

Q. Did you, Mr. Lezamiz, or Wickahoney Sheep Company ever complain to Mr. Sewell, or his wife, or Mr. Wilson, about the age of the sheep at any time?

A. No.

Mr. Langroise: If your Honor please, I believe that is all of the cross-examination we have.

The Court: Any redirect examination, Mr. Hawley?

Mr. Langroise: May I ask one more question?

The Court: Yes, you may.

Q. (By Mr. Langroise): Mr. Lezamiz, did you receive any instructions to sell any of the sheep that you were buying, or Wickahoney was buying from Mr. Sewell?

A. Yes.

(Testimony of Circiaco Lezamiz.)

Mr. Hawley: To which I object, and move the answer be stricken as not being the best evidence.

Mr. Langroise: Anything in evidence would be in [113] writing.

Q. (By Mr. Langroise): From whom did you receive the instructions?

Mr. Hawley: And I further object as not within the issues of the case. The facts are before the Court. The sales were made, and to whom, and they are relevant.

The Court: Being a Court trial, I will determine that.

The Witness: If anybody told me?

Q. (By Mr. Langroise): Yes, to sell the ewes.

A. Yes, sir.

Q. Who was that? A. Mr. Simplot.

Q. And when did he give you the instructions?

Mr. Hawley: I will make the same objection; it's irrelevant.

The Court: Same ruling.

The Witness: May I answer?

Mr. Langroise: Yes.

The Witness: Really, I don't know the date—sometimes in 1957—around July—sometimes in July.

Q. (By Mr. Langroise): Of what year; you said 1957? A. '56, I should say. [114]

Q. Are you sure it was 1956? A. Yes, sir.

Q. And was that prior to the time that the payment on October 10, 1956, was to be made to Sewell under the contract?

(Testimony of Circiaco Lezamiz.)

A. I still—I give you the correct answer, 1956 or 1957, excuse me a minute.

Q. Yes.

A. That was in 1957, and also in '56.

Q. And in '56? A. Also.

Q. And about when was it in 1956?

A. When?

Q. About what time of the year? A. Yes.

Q. If you can fix it.

Mr. Hawley: I will make the same objection, that it is immaterial.

The Witness: May I answer?

Mr. Langroise: Yes.

The Witness: About the month of July.

Q. (By Mr. Langroise): Of 1956?

A. Correct.

Q. Were you advised as to whether or not the payment [115] due on October 10, 1956, would be paid? A. If I know?

Q. Yes.

A. Yes, I know that it had to be paid.

Q. And did you know whether it was going to be paid by the Wickahoney Sheep Company?

A. It had to be paid from the Wickahoney Sheep Company.

Q. Did you know whether Wickahoney was going to pay? A. Yes, I know they don't pay.

Q. That they would not pay? A. Right.

Q. How did you know that?

A. Because——

(Testimony of Circiaco Lezamiz.)

Mr. Hawley: I will make the same objection.

The Court: Objection sustained.

Q. (By Mr. Langroise): When was it determined that Wickahoney Sheep Company would not make the payment due on October 10, 1956, under the terms of the contract?

Mr. Hawley: I will object to the question on the grounds of immateriality and irrelevancy, and the fact is in evidence that the payment was not made.

The Court: The objection will be [116] sustained.

Mr. Langroise: If your Honor please, that is all at this time.

The Court: Do you have any redirect, Mr. Hawley?

Mr. Hawley: Yes, your Honor.

### Redirect Examination

By Mr. Hawley:

Q. You testified in answer to Mr. Langroise that you used the eight hundred A U M's that Sewell transferred to you, is that right?

A. Eight hundred A U M's?

Q. Let's listen to the question. You testified to Mr. Langroise that Wickahoney used the eight hundred A U M's that were transferred by Sewell to Wickahoney under Exhibit No. 26, didn't you?

A. That's right.

Q. And looked at the description of the land on



(Testimony of Circiaco Lezamiz.)

the back of that Exhibit; what lands are those, if you know?

A. Really, I can give you an answer which lands is these—I don't follow the numbers and the initial.

Q. Doesn't the Exhibit state that the Rights are appertinent, or attached, or used in connection with the land described on the back of it?

A. Mr. Hawley, I don't follow you.

Mr. Langroise: It speaks for itself.

The Court: Yes. [117]

Q. (By Mr. Hawley): You don't know what the lands are?

A. No. I can't understand like the sixteen south and the section like I should.

Q. Do you know whether that is the land involved in the Exhibit 17?

Mr. Langroise: The witness said he didn't know.

The Witness: Really, I can't answer you. The A.U.M.'s, Mr. Hawley.

Q. With respect to the Nit Creek Range of Mr. Sewell, that Mr. Langroise asked you about, and referring to the check, No. 214, can you state whether or not that was given to Mr. Sewell, it is Exhibit 24, can you state whether or not that was given to Mr. Sewell in connection with grazing the ewes on the Nit Creek Property?

A. No, sir. No.

Mr. Langroise: Mr. Hawley, have you offered Exhibit 24?

Mr. Hawley: No, but I will offer it at this time.



(Testimony of Circiaco Lezamiz.)

The Court: It may be admitted, for what it is worth.

(The document referred to was marked Defendant's Exhibit No. 24 and was received in evidence.) [118]

Q. (By Mr. Hawley): Did you ever run any of your sheep, or Wickahoney Sheep, on the Nit Creek Range?

A. Yes. Every fall and spring since we had it.

Q. Did you ever run any in the summer on the Nit Creek Range?

A. Well, I make a deal with my neighbor and let him use the Nit Creek and he let me use the high country. That is the only way—I make a deal with my neighbor.

Q. Did Sewell ever lease or transfer the Nit Creek Property to the Wickahoney Sheep Company?

A. As I understand the transfer from Mr. Sewell to Wickahoney was a long time ago.

Q. I didn't hear you.

A. He transferred the right to Nit Creek a long time.

Q. You are talking about the rights. Did he ever lease the land to Wickahoney?

A. Any land, you mean?

Q. The Nit Creek land?

A. Well, I think the lease is the option to buy. We have all of the right of Nit Creek to use it.

Q. What did you mean by "right"?

(Testimony of Circiaco Lezamiz.)

A. We don't have to lease it cause we got it.

Q. What do you mean by "right" so that I understand?

A. Well, he transferred all of the rights from Nit Creek to Wickahoney Sheep Company, and Nit Creek.

Q. By "right" do you mean the grazing right?

A. Yes.

Q. Now, I will ask you the question. Did Sewell ever lease the Nit Creek land to Wickahoney?

A. Yes. Yes, he did, yes.

Q. And was that a written lease?

A. An oral lease, you mean?

Q. A written lease?      A. Writed down?

Q. When you have a written lease, you have to put it on paper.

A. No. Not the oral lease. I showed you it. We put as an enter place in the Nit Creek Right, and we got it. That is what you want to know, Mr. Hawley?

Q. Well, that is the answer I got.

A. I don't know what you want. Anyhow——

Q. Did you state to me, there was a written lease, or was not a written lease of the Nit Creek Land?

The Court: Could you clarify it, Mr. Hawley? Mr. Lezamiz, he wants to know if the lease was of the deeded land.

The Witness: Oh.

Q. (By Mr. Hawley): I am talking about the land. Was there any lease of any deeded Nit Creek Land? [120]      A. Deeded, yes.

(Testimony of Circiaco Lezamiz.)

Q. The Nit Creek?

A. That is deeded land?

Q. Was there a lease to the deeded land on Nit Creek?      A. Yes.

Mr. Hawley: That is all I was trying to get at.

The Witness: I hope I understand you right, what you want.

### Recross-Examination

By Mr. Langroise:

Q. Mr. Lezamiz, who prepared the papers for Wickahoney?      A. What is paper?

Q. Any paper for the leases and the agreement.

A. Well, Mr. Lloyd Haight and McDonald.

Mr. Langroise: I think that is all.

Mr. Hawley: I have no further question.

The Court: That is all sir.

(The witness left the stand.)

The Court: We will adjourn until tomorrow morning at 10:00 o'clock.

(Whereupon, the Court adjourned at 4:40 p.m.) [121]

April 11, 1958—10:00 O'Clock A.M.

The Court: You may call your next witness, Mr. Hawley.

Mr. Hawley: Call Mr. Balderrama.

J. BALDERRAMA

a witness called on behalf of the defendant having been first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: J. Balderrama.

Direct Examination

By Mr. Hawley:

Q. Mr. Balderrama, where do you reside?

A. Boise.

Q. Please speak up. A. In Boise.

Q. Do you have an association with the Wickahoney Sheep Company? A. I do.

Q. What capacity? A. Bookkeeper.

Q. And do you have possession of the books and records of Wickahoney Sheep Company, and are you familiar with them? A. I am. [122]

Q. And did you make all of the entries yourself in the regular course of business? A. Yes.

Q. At my request, you have with you the Journal and the General Ledger? A. I do.

Q. And do those books contain a complete and accurate record of all of the receipts and the disbursements in connection with the operation of the Wickahoney Sheep Company, one of the defendant's in this lawsuit? A. Yes.

Q. And at my request, did you make a summary of cash receipts—gross income—from the operation?

A. Yes, sir.

(Testimony of J. Balderrama.)

Q. Did you take that from the books and records which you have in front of you? A. Yes.

Q. And those are the original records?

A. Yes.

Q. In addition, did you prepare an Operating Statement of the Company for the period October 18, 1955, to September 30, 1956? A. Yes.

Q. And did you prepare a Statement of Income and Expenses, an Operating Statement for the period commencing [123] October 1, 1956, and ending October 8, 1957? A. Yes.

Q. And that summary was taken from the books you have in front of you? A. Yes.

Q. Do you have that summary? A. Yes.

Mr. Hawley: May that be marked?

The Clerk: Marked as Defendant's Exhibit No. 27 for identification.

(The document referred to was marked Defendant's Exhibit No. 27 for identification.)

Mr. Hawley: If you will hand that to Mr. Langroise, please.

(Document in question handed to Mr. Langroise.)

Mr. Hawley: We offer Defendant's Exhibit No. 27.

Mr. Langroise: If your Honor please, we object that it is irrelevant, immaterial, and incompetent, as far as the issues here are concerned.

The Court: I do not see the materiality at the

moment, but I am going to admit it for what it is worth.

(The document referred to was marked Defendant's Exhibit No. 27 and was received in evidence.)

Mr. Hawley: You may inquire. [124]

Mr. Langroise: We have no cross-examination.

Mr. Hawley: You may step down.

The Court: That is all, sir.

(The witness left the stand.)

The Court: Call your next witness.

Mr. Hawley: Call Mr. Haight.

#### LLOYD E. HAIGHT

a witness called on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: Lloyd E. Haight.

#### Direct Examination

By Mr. Hawley:

Q. Your name is Lloyd Haight?

A. Yes, sir.

Q. Where do you reside, Mr. Haight?

A. Boise, Idaho.

Q. And do you have any official capacity with the Defendant, Wickahoney Sheep Company?



(Testimony of Lloyd E. Haight.)

A. I am Vice President and legal advisor to the company.

Mr. Langroise: Move that the answer be stricken. The best evidence is with the defendant company and would be established by the books and the records of the company.

The Court: You mean as to the capacity of [125] Vice President?

Mr. Langroise: Yes, sir.

Mr. Hawley: I will withdraw the question.

Q. (By Mr. Hawley): Are you the attorney for the Wickahoney Sheep Company?

A. I am, yes, sir.

Q. That is satisfactory. In connection with your functions as attorney for Wickahoney Sheep Company, did you cause to be prepared Defendant's Exhibit No. 23, and did you draft the document?

A. I did, yes.

Q. Now, in connection with Defendant's Exhibit No. 23, did you take any further proceedings in aid of this memorandum agreement?

A. Yes, I did.

Q. I will ask you whether or not, to your knowledge, the parties, Sewell and Wickahoney, engaged the services of one Harley McDowell?

A. They did, yes.

Q. And did the company receive anything from Mr. McDowell pursuant to the services that he rendered for the company and Sewell?

A. The company did receive a report, yes.

Q. And that, Mr. Haight, is the report that

(Testimony of Lloyd E. Haight.)

has been [126] admitted in evidence in this proceeding, to your knowledge?      A. Yes, sir.

Q. Handing you what has been marked as Exhibit No. 25, and admitted in evidence, is that the report to which you had reference?

A. It is, yes, sir.

The Clerk: Marked as Defendant's Exhibit No. 28 and 29 for identification.

(The documents referred to were marked Defendant's Exhibits No. 28 and No. 29 for identification.)

Q. (By Mr. Hawley): After receiving Exhibit No. 25 from the Wickahoney Sheep Company, which is Mr. McDowell's reports, did you then cause to be prepared any document?

A. Yes, sir. I prepared a lease and an option to purchase.

Q. Handing you first Defendant's Exhibit 28, would you state, generally, what that document purports to be?

A. A copy of the lease I prepared.

Q. And referring to Exhibit No. 29, would you state what the document is?

A. That is a copy of the offer to purchase which I prepared.

Q. Now, the report covers the Nit Creek property. I will ask you if the legal description of the property [127] contained in Exhibit 28 and 29 are the same property referred to in Mr. McDowell's report?

(Testimony of Lloyd E. Haight.)

Mr. Langroise: We object to all of this, if your Honor please, as this being immaterial, and irrelevant, and is a separate transaction occurring in October, 1955, and is not tied in to the Purchase Contract entered into by the Sewells.

The Court: It may be. I am going to admit it conditionally. This is a Court Trial, and I will determine it at a later date.

The Witness: It is a description of the Nit Creek property.

Q. (By Mr. Hawley): What did you do with those documents?

A. I transmitted them to Mr. Wilson, Attorney at Law, at Elko, Nevada.

Q. What date?

Mr. Langroise: May the objection go to all of this, your Honor?

The Court: Yes, it may.

The Witness: The latter part of September, I believe, 1956.

Q. (By Mr. Hawley): And how were the documents sent?

A. By regular mail, postage pre-paid. [128]

Q. And what address?

A. I don't recall Mr. Wilson's address. He is in a Bank Building.

Q. What town? A. Elko, Nevada.

Q. Now, did you ever receive a communication from Mr. Wilson in connection with the receipt of the documents you testified you mailed to him?

A. I did. Yes, sir.

(Testimony of Lloyd E. Haight.)

The Clerk: Marked as Defendant's Exhibit No. 30 for identification.

(The document referred to was marked Defendant's Exhibit No. 30 for identification.)

Q. (By Mr. Hawley): With reference to Exhibit 30, can you state, generally, what the document is, or purports to be?

Mr. Langroise: If it is the purpose of identification, or is it for contents?

The Court: He may answer. Tell generally what it is.

The Witness: It is a letter addressed to me from Orville Wilson, dated October 5, 1956, wherein he acknowledged receipt of the Nit Creek document.

Mr. Hawley: That is satisfactory. We offer Defendant's Exhibit No. 30. [129]

Mr. Langroise: We object, if your Honor please, on the grounds it is irrelevant and immaterial so far as the issues here are concerned.

The Court: It may be admitted for what it is worth.

(The document referred to was marked Defendant's Exhibit No. 30 and was received in evidence.)

Mr. Hawley: We feel it is material, your Honor, in connection with the affirmative defense.

Q. (By Mr. Hawley): Now, I will ask you, Mr. Haight, if in fact, the Agreement that you have referred to, Exhibits 28 and 29, were ever executed by Mr. Sewell and returned to you?

(Testimony of Lloyd E. Haight.)

Mr. Langroise: Our objection runs to all of this.

The Witness: They were never executed or returned to us.

Q. (By Mr. Hawley): Was a counter-proposal ever made by them? A. No, sir.

Q. Handing you what has been admitted in evidence as Defendant's Exhibit 22, which is an Assignment from Wickahoney Sheep Company to the Ruby Company of the lease, I believe it is Exhibit 17, did you cause that instrument to be prepared? A. Yes, sir. I did.

Q. Can you state whether or not there is a lease—a [130] sub-lease—back from Ruby Company to the Wickahoney Sheep Company?

Mr. Langroise: If there is a sub-lease, it would be the best evidence.

The Court: He may answer "yes or not."

The Witness: There was never a written sub-lease.

Q. (By Mr. Hawley): Was there an oral agreement?

A. Wickahoney Sheep Company was to use the property under a permissive use agreement, and compensate the Ruby Company for the base rental and the taxes involved.

Mr. Hawley: You may inquire.

(Testimony of Lloyd E. Haight.)

Cross-Examination

By Mr. Langroise:

Q. Mr. Haight, Mr. Orville Wilson, to whom you have referred, is an attorney at Elko?

A. Yes, sir.

Q. And he also represented the J. R. Simplot Company down there, did he not?

A. Yes, sir.

Mr. Langroise: That is all.

Mr. Hawley: You may step down.

(The witness left the stand.)

Mr. Elam: If your Honor please, there are a few matters: It is stipulated that the Notice given to the [131] bank for forfeiture was the one sent to them by registered mail as testified to yesterday.

Mr. Langroise: The Notice of Default was sent January 15th, and received January 16th.

Mr. Elam: And there were two copies sent to the bank, and there was no request made of the bank to forward the same to Wickahoney Sheep Company by registered mail.

Mr. Langroise: There is no question, and it is so stipulated.

Mr. Hawley: One of the Notices of Default was received on October 16th, and the other on the 17th.

Mr. Langroise: The one to Wickahoney was on the 17th.

Mr. Elam: And to report on the matter requested yesterday, as to the draft from John Clay



for \$22,357.13; that had a notation on the corner of the draft as follows: "One thousand eighty-six lambs." The draft to Commercial Credit Corporation for eleven thousand seven hundred four dollars eleven cents (\$11,704.11) had a notation "Shorn wool at Portland." The draft for two thousand eight hundred sixty-six dollars fifty-one cents (\$2,866.51) to Commodity Credit had the notation "Unshorn lambs." None of the other drafts had any notation whatsoever. This was checked on the micro-film.

The Court: As I understand, these were drafts received [132] by the bank with the notations thereon?

Mr. Langroise: That is correct.

Mr. Elam: Turned over to the bank by the treasurer of Wickahoney Sheep Company.

The Court: With the notations on them. Call your next witness.

Mr. Hawley: Call Harley McDowell.

HARLEY McDOWELL,  
a witness called on behalf of the Defendant, having been first duly sworn was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: Harley M. McDowell.

#### Direct Examination

By Mr. Hawley:

Q. Your name is Harley McDowell?

A. Yes.

(Testimony of Harley McDowell.)

Q. Where do you reside, Mr. McDowell?

A. Boise.

Q. And what is your occupation?

A. Range consultant and appraiser in the land management business.

Q. Are you self-employed? A. I am.

Q. And how long have you been in that business, just your own business? [133]

A. I have had my own business for the past seven years.

Q. And what kind of a business is that?

A. I make appraisals of all types of property; I do work on grazing consulting, and grazing operations; consulting on land management, ranching practices, and map making, and work with the United States Forest Service and the United States Department of the Interior and Taylor Grazing.

Q. Prior to going into your own business, what was your background?

A. I have a Bachelor's Degree from the Colorado State University in Range Managing and Land Economics, and have worked on a Master from Utah State University in the same field. I have ten years' experience with the United States Department of the Interior on Range Management and Land Classification, and four years as Director of Evaluation in charge of all appraisals for the State of Idaho.

Q. Could you state whether you are generally familiar with the nature of the Taylor Grazing Rights? A. I am.

(Testimony of Harley McDowell.)

Q. Could you tell us whether you are generally familiar with the carrying capacity of the range lands?      A. I am.

Q. Are you familiar with the Grand View-Bruneau Area [134] for sheep and cattle operation?

A. Yes, sir.

Q. Are you familiar with what has been known in this lawsuit as the Coig spread?

A. Yes, sir.

Q. And for how long have you been familiar with that outfit?      A. For 19 years.

Q. What has been the extent of your familiarity?

A. My first contact was in the capacity of making a range survey and a property study in compliance with the Taylor Grazing Regulations. Since that time I have been on the property many times checking the grazing capacity and working on the range management problems in the area.

Q. You are the Harley McDowell who has filed a report with Sewell and Wickahoney in this present situation, are you not?      A. I am.

Q. Now, will you state whether or not you assisted the parties in this litigation in transferring any A U M's of the Taylor Grazing?

A. I did.

Q. And would you state, generally, what those eight hundred A U M's were, where they came from, if you know, and to what they were transferred? [135]

(Testimony of Harley McDowell.)

Mr. Langroise: Objection, if your Honor please, as being irrelevant, immaterial, and incompetent, and not within the issues here; and I want the objection to run to all of this line of questioning.

Mr. Hawley: It is material to the matter of the affirmative defense and the cross-complaint.

The Court: I cannot see how it is, but I am going to reserve the ruling until a later date.

Mr. Hawley: Very well.

The Witness: The eight hundred A U M's were taken from the property owned by C. A. Sewell, and transferred to the Wickahoney property or formerly in the Coig set up.

Q. (By Mr. Hawley): Can you state whether or not the parties designated you to set aside any of the Sewell's deeded land to be transferred to the Wickahoney Sheep Company? A. They did.

Q. And what lands were those?

A. Locally known as the Nit Creek property, comprising three hundred sixty acres.

Q. Are you familiar with it? A. Yes.

Q. And have you been over it? A. Yes.

Q. Frequently? [136]

A. I have been on it many times in the last 19 years.

Q. Do you know how many A U M's are required in that area to care for four bands, or four thousand head of ewes? A. I do.

Q. How many A U M's are required?

Mr. Langroise: In addition to the general ob-

(Testimony of Harley McDowell.)

jection, we object that there is no proper foundation laid as far as the issues here are concerned.

Mr. Hawley: Again, that is correlative of the misrepresentation, your Honor.

The Court: There is no misrepresentation so far. He may answer.

The Witness: Nine thousand six hundred.

Q. (By Mr. Hawley): Now, I will ask you this: Have you examined the description of the real estate, the grazing rights, and the State leases described in Exhibit 17, being the modified lease between the parties?

A. If Exhibit 17 is the modified lease, I have examined it.

Q. What property is that, do you know of your own knowledge?

A. That is the old Coig outfit, the State lease and deeded [137] of the Wickahoney Sheep Company.

Q. How many Animal Unit Months are contained in that described property, if you know?

Mr. Langroise: With the understanding of the same objection, your Honor.

The Court: Yes.

The Witness: May I refer to my notes?

Q. (By Mr. Hawley): Yes.

A. In making a summary of the base property, deeded and leased lands, and the Federal Range Privileges, the total carrying capacity would be five thousand eight hundred seventy-eight A U M's.

Q. And how many sheep on a year round lamb



(Testimony of Harley McDowell.)

operation would those five thousand some odd A U M's carry?

A. Approximately twenty-five hundred.

Q. Assuming four thousand odd head of ewes being operated on the Coig property as described, how much additional range would be required?

Mr. Langroise: To which we want the same objection.

The Court: Yes. Same ruling.

The Witness: You would need three thousand seven hundred twenty-two additional A U M's. [138]

Q. (By Mr. Hawley): Can you convert that into the number of head of sheep and the months that would be required for additional range?

A. I would like to explain the answer in this respect; it would work out to fifteen hundred head of sheep. That is not true in this outfit; there is adequate range for the spring and fall seasons, and it is short for the summer or the late spring when you are making the lambs, and you are short in the winter—you would have to buy hay and grain—those are when you are short, and it would not be the straight fifteen hundred, you would be short—some seasons it would be adequate.

Q. In your opinion, you would be short on four thousand for a carrying capacity of four thousand ewes, you would be short a summer season and a portion of a winter season?

A. That is correct.

Q. And how many months, or what period of time in the summer?



(Testimony of Harley McDowell.)

A. You would be short approximately two thousand head of sheep in two months in the summer, and in the winter you would lack enough hay if all of the property were in top production for all of the four thousand for as much as two months. [139]

Mr. Hawley: You may inquire.

Mr. Langroise: Your Honor, without waiving the objection, we want to ask one or two questions.

The Court: Very well.

### Cross-Examination

By Mr. Langroise:

Q. Mr. McDowell, with respect to the agreement, you are familiar with Exhibit No. 25?

A. I am.

Q. And now, with respect to Plaintiff's Exhibit No. 25, that is the report of what you did with respect to that agreement? A. That's right.

Q. Now, pursuant to that, did you go ahead with the assistance of Mr. Sewell and accomplish a transfer of eight hundred A U M's from the land of Mr. Sewell, other than the Coig property?

A. Yes, sir.

Q. And that is Exhibit No. 26?

A. Yes, sir.

Q. And that transfer of the eight hundred A U M's was from the land of Mr. Sewell, other than the Coig property, is that correct?

A. That is correct.

(Testimony of Harley McDowell.)

Q. And in the transfer it was transferred to attach [140] to the Coig property, is that correct?

A. That is correct.

Mr. Langroise: That is all.

### Redirect Examination

By Mr. Hawley:

Q. Did the shortage that you have referred to in your previous testimony apply to the years of 1956—'55, '56 and '57? A. Yes, sir.

Mr. Hawley: Thank you, that is all.

Mr. Langroise: Nothing further.

The Court: That is all, Mr. McDowell.

(The witness left the stand.)

Mr. Hawley: We rest, your Honor.

The Court: Any rebuttal?

Mr. Langroise: One moment, if your Honor please. We will want to make a motion, and then we will see about a rebuttal.

Mr. Sullivan: May it please the Court, the Plaintiffs move for a dismissal of the counter-claim of the Defendant's on the ground and for the reasons there is no evidence nor any basis in law or in fact to support the allegations or to entitle the defendants to a judgment on the counter-claim.

The counter-claim is based entirely upon purported false [141] misrepresentations made by the Plaintiffs Sewell to the Defendant Wickahoney

Sheep Company; (1) that in connection with the age of the sheep; (2) that there were more lands and grazing rights in the lease which was subsequently assigned to the Ruby Company as represented by the Plaintiff Sewell. There is no evidence whatsoever that the Plaintiff Sewell made any representation of any kind concerning the age of the sheep with which the President and General Manager of Wickahoney Sheep Company was not familiar. He testified that he had examined the camps, and had, on numerous occasions, examined the sheep, and that actually Wickahoney Sheep Company had possession of the bands of sheep for a period of approximately two months before the Purchase Agreement was ever entered into. It shows that there was never any claim asserted or statement made by Defendant Wickahoney Sheep Company to Sewell, or Orville Wilson, or any of the Plaintiffs, claiming that there was any misrepresentation made by them or in fact as to the quality of the sheep until the counter-claim was filed in the action. During the period of time they held the sheep from October 15, 1955, until they were turned over to the Receiver on October 9, 1957, and held them and treated them and used them as their own; made sales of lambs, ewes, and wool, without any claim during that whole time that there had been any misrepresentation as to the sheep. The same is also true of the question of the range [142] rights as asserted in the counter-claim. There was no representation proved, or any evidence offered as to any representation of the

range rights, or that the representation, if any, were not complete.

The President and General Manager of the Wickahoney Sheep Company testified that he got all that he expected to get, but he would like to have more. In addition, the evidence shows that the lease of the real property was assigned and transferred by the Wickahoney Sheep Company to the Ruby Company, which is still apparently the owner and the holder of that lease.

It was testified to by Mr. Haight that the Wickahoney Sheep Company had the permissive use of the property, and that does not give them a right to maintain any claim against these Plaintiffs on this counter-claim on the basis of a false misrepresentation, if any were made. As to the range rights and the real property involved, it is simply that the Wickahoney Sheep Company is no longer the real party in interest.

Mr. Hawley: If your Honor please, the cross-complaint is double-barreled; One, on the representation with respect to the sheep, and the second, in connection with the misrepresentation of the matter of the range rights. Now, there are a lot of Exhibits in the lawsuit filed up to this time and admitted, and one of the Exhibits we rely on is the [143] October 18, 1955, Agreement between the parties, which was prior to the execution of the principal contract, on December 15, 1955. In that Agreement, in recital, it says that the additional range rights are contemplated to be exchanged between the parties, and the additional

range lands are to be selected and leased and optioned to the Wickahoney Sheep Company.

There has been a partial performance by the transfer of eight hundred A U M's to the Wickahoney Sheep Company base land spread.

The Court: Assuming that that is true, does that give you a basis for an action for fraud and misrepresentation, or breach of contract?

Mr. Hawley: I think fraud and misrepresentation.

The Court: I am not going to rule on the motion at this time. I am going to reserve the ruling until I decide what I think is the main case. At this time, I will be frank to say, that I don't know of any evidence of the misrepresentation. I will look over all of the Exhibits and review the evidence. Because they agreed to do something and didn't do it, doesn't mean fraud and misrepresentation. Do you care to argue the case orally at this time?

Mr. Langroise: I am assuming it would be of little value to your Honor.

The Court: I would not go that far, Mr. Langroise. [144] You may waive oral argument and submit it on brief, if you care to.

Mr. Hawley: I would prefer to submit it on brief.

Mr. Langroise: That is agreeable.

The Court: The Court will take it under advisement.

Mr. Hawley: I would like to renew the motion,



at this time, to dismiss with the additional ground that the Plaintiff proof of damages are speculative.

The Court: Very well, same ruling. The ruling will be withheld pending the findings. We will adjourn subject to call.

(Whereupon the Court adjourned.)

County of Ada,  
State of Idaho—ss.

I, Edward F. Seymour, hereby certify that I am an Official Reporter for the United States District Court for the District of Idaho;

I further certify that I took the proceedings in the above entitled cause in Stenotypy and thereafter the same were reduced to typewriting under my supervision, and I further certify that the foregoing is a true and correct transcript of the proceedings had in and about said hearing on the date mentioned therein.

In witness whereof I have hereunto set my hand this 27th day of January, 1959.

/s/ EDWARD F. SEYMOUR,  
Official Reporter.

[Endorsed]: Filed January 27, 1959.



[Title of District Court and Cause.]

### CLERK'S CERTIFICATE

United States of America,  
District of Idaho—ss.

I, Ed. M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing papers are that portion of the original files designated by the parties and as are necessary to the appeal under Rule 75 (RCP):

1. Complaint.
2. Summons, with return thereon.
3. Motion to Dismiss and Motion for More Definite Statement.
4. Minutes of the court of June 11, 1957, denying motions.
5. Answer and counter claim.
6. Reply to counter claim.
7. Motion to deposit in court.
8. Minutes of the court of October 4, 1957, granting motion to deposit escrow in court.
9. Motion for leave to file supplemental complaint.
10. Motion for appointment of temporary receiver, etc.
11. Affidavit of Jess B. Hawley, Jr.
12. Order authorizing deposit in court.
13. Motion for appointment of receiver.
14. Minutes of the court of October 8, 1957,

granting appointment of receiver and filing of supplemental complaint.

15. Supplemental complaint.
16. Order appointing receiver.
17. Receipt for documents deposited in registry of court.
18. Bond of receiver.
19. Oath of receiver.
20. Interrogatories to Defendant Wickahoney Sheep Company.
21. Interrogatories to Defendant Bank of Idaho.
22. Inventory of receiver.
23. Stipulation for sale of property.
24. Order for sale of property.
25. Objections to interrogatories to Wickahoney Sheep Co.
26. Objections to inventory of receiver.
27. Objection to interrogatory to Bank of Idaho.
28. Answers to interrogatories by Bank of Idaho.
29. Answers to interrogatories by Wickahoney Sheep Co.
30. Motion of receiver for delivery of documents.
31. Notice of hearing.
32. Answer to supplemental complaint.
33. Motion of Wickahoney Sheep Co. to amend order appointing receiver.
34. Minutes of the court of November 29, 1957, denying motions to amend Order Appointing Receiver and denying Objections to inventory of receiver; granting motion for delivery of documents; taking Objections to Interrogatories under advisement.

35. Order for receiver to examine documents, etc.
36. Stipulation and order for sale of property.
37. Order re: objections of Defendants to interrogatories.
38. Answer of Wickahoney Sheep Co. to Plaintiffs' interrogatory No. 14.
39. Notice of taking deposition of Ciriaco Lezandiz.
40. Appearance of L. E. Haight as additional counsel for Defendants.
41. Motion for production, inspection and copying of documents.
42. Affidavit in support of motion for production, etc.
43. Notice of hearing on motion for production, etc.
44. Notice of taking deposition of J. R. Simplot.
45. Minutes of the court of April 3, 1958, ruling on motion for production.
46. Minutes of the court of April 9, 1958, pre-trial hearing.
47. Minutes of the court of April 10, 1958, record of trial.
48. Minutes of the court of April 11, 1958, record of trial.
49. Stipulation and order for sale of property.
50. Motion and order extending time for Defendant to file brief.
51. Stipulation and order extending time for Plaintiff to file reply brief.
52. Copy of statement of taxes due by Wickahoney Sheep Co.

53. First and final account of receiver.
54. Stipulation to allow receiver's account.
55. Order approving first and final account of receiver and discharging receiver.
56. Minutes of the court of October 31, 1958, announcing decision.
57. Objections to findings of fact and conclusions of law.
58. Minutes of the court of December 18, 1958, hearing on objections to findings of fact and conclusions of law.
59. Findings of fact and conclusions of law.
60. Judgment.
61. Receipt from W. H. Langroise for purchase agreement, bill of sale, chattel mortgages, and check.
62. Bill of costs.
63. Notice of taxation of costs.
64. Notice of appeal of Bank of Idaho.
65. Stipulation and order fixing supersedeas bond.
66. Supersedeas bond (Bank of Idaho).
67. Notice of appeal of Wickahoney Sheep Co.
68. Bond for costs on appeal.
69. Designation of contents of record on appeal.
70. Deposition of J. R. Simplot.
71. Reporter's transcript of proceedings.
72. Exhibits No. 1 to 30 inclusive.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 17th day of February, 1959.

[Seal]      /s/ ED M. BRYAN,  
Clerk.

[Endorsed]: No. 16390. United States Court of Appeals for the Ninth Circuit. Wickahoney Sheep Company, a corporation, Appellant, vs. C. A. Sewell, Orene H. Sewell and Orville R. Wilson, Appellees, and Bank of Idaho, Appellant, vs. C. A. Sewell, Orene Sewell and Orville R. Wilson, Appellees. Transcript of Record. Appeals from the United States District Court for the District of Idaho, Southern Division.

Filed: February 19, 1959.

Docketed: March 6, 1959.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 16390

WICKAHONEY SHEEP COMPANY, an  
Idaho corporation,

Appellant,

and

BANK OF IDAHO (formerly Continental State  
Bank), an Idaho corporation,

Appellant,

vs.

C. A. SEWELL, ORENE H. SEWELL and  
ORVILLE R. WILSON,

Appellees.

MOTION FOR CONSOLIDATION  
OF APPEALS

Come Now the parties hereto, by and through their respective attorneys of record, and respectfully move the Court that the separate appeals of Appellant Wickahoney Sheep Company and Appellant Bank of Idaho be consolidated, and that a single record only be required for said separate appeals, and further that said Appellants may jointly file one brief on appeal herein, covering their respective separate appeals, and that the Plaintiff be required to file but one reply brief in answer thereto.

This Motion is predicated upon the stipulation between the parties attached hereto and made a part hereof.



Dated this 20th day of February, 1959.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Appellant  
Wickahoney Sheep Co.

ELAM & BURKE,

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Appellant  
Bank of Idaho.

W. H. LANGROISE,

W. E. SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Appellees.

So Ordered:

/s/ WALTER L. POPE,

Chief Judge, U. S. Court of Appeals for the Ninth  
Circuit.

[Title of Court of Appeals and Cause.]

### STIPULATION

Come Now the parties hereto, by and through their respective attorneys of record, and stipulate as follows:

Whereas the Appellants above named have appealed separately from that certain final judg-

ment made and entered in this action against each of said Appellants on the 18th day of December, 1958; and

Whereas the parties hereto deem it to be in their best interests to consolidate said separate appeals;

Now, Therefore, It Is Stipulated that said separate appeals of Appellant Wickahoney Sheep Company and Appellant Bank of Idaho be consolidated, and a single record only be required on said appeal, and further that said Appellants may jointly file one brief on appeal herein, covering their respective separate appeals, the Appellees being required to file but one reply brief in answer thereto.

Dated this 20th day of February, 1959.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Appellant  
Wickahoney Sheep Co.

ELAM & BURKE,

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Appellant  
Bank of Idaho.

W. H. LANGROISE,

W. E. SULLIVAN,

By /s/ W. E. SULLIVAN,  
Attorneys for Appellees.

[Endorsed]: Filed March 3, 1959.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH  
APPELLANTS INTEND TO RELY

Come Now Appellants, Wickahoney Sheep Company and Bank of Idaho, and pursuant to Rule 17(6) of the rules of the above-entitled court do hereby designate and set forth the points upon which they intend to rely on appeal, as follows:

I.

That the court erred in making and entering its final judgment in favor of the Plaintiffs and against each of the Defendants, on December 18, 1958, for the reason that said judgment is contrary to law.

II.

That the court erred in overruling the objections of the Defendants to the proposed findings of fact and conclusions of law, and in refusing to adopt the affirmative findings requested by said Defendants.

III.

That the court erred in making and entering its findings of fact and conclusions of law for the reason that the same were not supported by the evidence, and were contrary to law.

Dated this 4th day of March, 1959.

HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,

Attorneys for Appellant  
Wickahoney Sheep Co.

ELAM AND BURKE,  
HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Appellant  
Bank of Idaho.

Affidavit of mail attached.

[Endorsed]: Filed March 6, 1959.

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[Title of Court of Appeals and Cause.]

### STIPULATION

Come Now the respective parties hereto, by and through their attorneys of record, and stipulate that the exhibits in Case No. 3339 in the District Court of the United States for the District of Idaho, Southern Division, need not be printed as part of the record on appeal. The parties stipulate that it is in their best interests that said exhibits need not be printed, but that they be considered and referred to by the Court and counsel as though actually printed and incorporated in the record on appeal.

Dated this 4th day of March, 1959.

ELAM & BURKE,  
HAWLEY & HAWLEY,

By /s/ JESS B. HAWLEY, JR.,  
Attorneys for Appellant  
Bank of Idaho.

HAWLEY &amp; HAWLEY,

By /s/ JESS B. HAWLEY, JR.,

Attorneys for Appellant  
Wickahoney Sheep Co.

W. H. LANGROISE,

W. E. SULLIVAN,

By /s/ W. E. SULLIVAN,

Attorneys for Appellees.

[Endorsed]: Filed March 6, 1959.